

ANGUS COUNCIL

POLICY AND RESOURCES COMMITTEE  
PERSONNEL AND PROPERTY SERVICES COMMITTEE4 Sept 2001  
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REPORT BY THE DIRECTOR OF PROPERTY SERVICES

No 1023/01

**PARTNERING IN THE CONSTRUCTION INDUSTRY****Abstract**

This report advises the Committee of the ideology of Partnering in the Construction Industry and seeks approval for this approach to be added to the existing procurement methods available to the Council for use where this would be beneficial for the Council.

**RECOMMENDATION**

The Committee is recommended to:

1. note the ideology of Partnering in the Construction Industry;
2. note the potential areas for implementing Partnering in relation to future Angus Council projects;
3. agree that the partnering approach be tested on a suitable project on a pilot basis to evaluate the benefits of this procurement method and review the outcome.
4. note that adoption of the partnering approach for a particular project will be made clear to prospective contractors and will require to be formally agreed by the appropriate Council Committee(s);
5. note that the Director of Finance will require to make appropriate amendments to the Council's Financial Regulations in due course to reflect the adoption of partnering as an agreed procurement method of the Council (if ultimately adopted).

**1 INTRODUCTION**

As part of the Property Services Departments continuing drive for Best Value, alternative forms of procurement and construction management are actively investigated to ensure that the Council's construction projects are delivered in the most advantageous manner.

A number of alternative procurement arrangements are currently utilised to facilitate building works. These have evolved to meet specific circumstances and technological developments and the circumstances peculiar to a specific project will dictate which type of procurement route is the most appropriate.

These procurement strategies all tend towards traditional competitive tendering procedures whereby the lowest price is the single most important criterion for selection of a contractor. The resultant contract conditions generally divorce the design process from the construction of a project and by their very nature the contracts which are formulated can tend to create opposing interests and adversarial relationships between the Design Team and the contractor. This culture does not generally encourage active collaboration and conversely can promote a confrontational approach in which problems encountered are often regarded as opportunities for claiming extra payment and extensions to the contract period rather than issues to be resolved in the employer's interest. This can ultimately lead to additional time and effort being spent by both the Design Team and the contractor to prove that their respective opinions are correct.

The above problems have been recognised on a national scale and in an attempt to tackle these issues, the construction industry has recently been the subject of two eminent government-led reports attempting to improve performance and reduce conflict in the building process.

'Constructing The Team' was produced by Sir Michael Latham and published in July 1994. This report was aimed at reducing conflict and litigation and improving the industry's productivity and competitiveness.

Sir John Egan continued this theme in the second report 'Rethinking Construction' which was published in July 1998. This report called for five essential improvements including committed leadership; a focus on the customer; integrated processes and teams; a quality driven agenda and commitment to people.

The ethos proposed to attain these improvements imposes a radically different operational culture on all the parties currently involved in the building process and is generically referred to as Partnering. This new culture is primarily aimed at promoting teamwork and by its very nature introduces the concept of selecting contractors not on the basis of lowest price alone but assessment of the overall value that a contractor can make to a project.

This report has been produced to provide an insight into the Partnering ideology, together with suitable methodologies for possibly implementing the concept for future Angus Council projects where this would be of benefit to the Council.

## 2 PARTNERING

Partnering is defined as "a management approach between organisations to achieve the specific business objectives of each participant's resources". Partnering can be based on a single project called 'Project Partnering' or a long-term commitment that spans several years and several projects called 'Strategic Partnering'.

Project Partnering is the most likely form for adoption by Angus Council, however, there may be scope for Strategic Partnering where repetitive works are being undertaken.

The most radical aspect of Partnering, is the method of selecting the Partnering contractor. The selection of the correct Partnering contractor is paramount to the success of a project and thus the selection process utilises price as only one of a number of criteria to ultimately select the contractor who can add the best value to the project.

**It is therefore extremely important at the outset of a project that serious consideration be given to assess whether there is a real advantage to be gained by Partnering. Thus, the Client's specific project objectives and priorities must be identified and assessed to decide if Partnering is the necessary tool to ensure that those requirements are attained.**

The areas where a contractor can add value by making positive contributions to the successful delivery of a project must be identified. Potential exists in a number of key areas including:

- **Better Teamwork** - critical to the success of any project.
- **Better Programming** - shorter project delivery times, or better fit to client constraints.
- **Better Design and specification** - better buildability and more cost effective sourcing.
- **Better Care of the environment** - less waste and damage, better public perceptions.
- **Better Budgeting** - greater sensitivity to the market, specialist knowledge.
- **Better Management of risk and value** - participation in risk and value management.

If it is considered that a contractor can make a positive contribution to a project via Partnering which would not otherwise be attained via traditional procurement strategies then there is clearly an argument that this methodology should be adopted.

### 3 TIMING OF SELECTION OF A PARTNER

Choosing the timing for selecting a contractor as a Partner is a fundamental decision that ultimately determines how roles, responsibilities and risks are shared between members of the project team and it also influences which form of contractual arrangement should be utilised. A range of matters should therefore be given careful consideration including:

- **Time** - how soon is the project needed? - Is it to be completed as a whole or in separate phases? - Is time of the essence?
- **Cost** - how important is it to know the final cost before committing to construction? - Is certainty of final cost more important than lowest final cost?
- **Quality** - what level of quality is required?
- **Complexity** - what level of technical complexity is required? - Would a contractor's specialist experience and input into the design be an asset to the project?

The answers to the above matters along with other project specific issues will ultimately dictate the most appropriate timing for selecting a contractor. However, in general terms, this can either take place at an early stage in the design process or alternatively at a later stage when the design is well advanced.

When a contractor is selected early in the project, a single contractor is selected when the project has been defined in outline only and is then fully engaged during the development of the design phase. This provides the maximum opportunity to contribute construction engineering knowledge and other skills to the greatest effect. It also represents the greatest opportunity for team building. However, it seriously limits both the commitment the contractor can give to the final cost at the time of selection and accordingly, the degree of price competition for the services offered by that particular contractor. To succeed, it demands an open and collaborative culture on the part of all.

When a contractor is selected late in the project the final selection is not made until just before construction, although a number of contractors can be involved in the development of the project while remaining in competition. It still allows the contractor to be selected primarily on the basis of price, which can be firm, but the opportunity to contribute is limited compared to selection of the contractor early in the project. It can also increase the design and costing elements of a project for the designers and any such work by the unsuccessful contractors will be abortive.

#### 4 CONTRACTUAL ARRANGEMENTS

A Partnering agreement is not a contract, nor does it form a legally binding commitment. Therefore, a requirement still exists for the employer and the contractor to enter into a formal contract by way of the contractor providing an offer based on pre-determined terms and conditions and thereafter the employer accepting that offer. There is therefore a requirement for alternative contractual mechanisms to suit the timing of the selection of the preferred contractor.

A 'Prime Cost Contract' contractual arrangement is generally required to be utilised where a contractor is selected early in the project. In essence, it embraces the Cost Reimbursement Contract where a 'Target Cost' and 'Guaranteed Maximum Price' are agreed prior to commencement. The parties also agree to share any savings depending on whether the total actual cost exceeds or is less than the target cost. The savings are commonly 50% of the difference between the total actual cost of the project and the target cost. If the total actual cost of the project exceeds the guaranteed maximum price then the contractor must solely bear this cost burden.

The advantages include:

- The contractor can be involved in the design process giving him the opportunity to contribute his relevant knowledge and skills at a time when the biggest improvements to methods and design proposals can be achieved at least cost.
- Team building begins at an early stage with those who will be involved throughout the project.
- Work on site may proceed before detailed design is complete.
- Suitable for projects where repeated design is utilised particularly where Strategic Partnering is being considered enabling the team to measure continuous improvement.
- Contractors working with the Council to ensure all project objectives – e.g. completion dates, quality, health & safety etc. are met.

The disadvantages include:

- Contractor selection takes place at an early stage, reducing the opportunity for competition on price although by utilising open book accounting, the authority can determine whether best value is being obtained.
- Target Cost/Guaranteed Maximum Price provisions are not currently included in Prime Cost contract conditions and there is insufficient history to gauge the likely levels of dispute that may occur. It therefore emphasises the importance of selecting the correct contractor.
- Requires detailed data of a similar contract, probably entered into on a competitive basis, in order to set a sound Target Cost/Guaranteed Maximum Price, otherwise it is difficult to ascertain if the best price is being obtained for the project.

A 'Design and Build' contractual arrangement is most likely to be the best suited for utilisation where a contractor is selected late in the project. This facilitates the provision of a 'traditional' competitive tendering exercise and attains a fixed price for the project.

The advantages include:

- Competition is maintained ensuring that the best price is being obtained for the project.
- A standard form of contract is available for a Design and Build Contract and any design input required from the contractor, his Sub-contractors or Consultants is warranted.
- Work on site may proceed before detailed design is complete.

The disadvantages include:

- contractor selection takes place at a late stage, limiting the opportunity for the contractor to contribute to the design process to any great effect.
- Team building does not begin until just before construction therefore the opportunity to develop the teamwork approach is restricted.

## 5 SELECTION CRITERIA

A potential contractor must be judged on the basis of possessing the attributes required to add value according to the demands of the project and the Client's objectives and priorities.

A range of attributes might be required including:

- **Technical knowledge and skills** - experience in engineering specialist elements; design capability.
- **Management skills** - delivery on time; staff awareness of programme; use of technical support; delivery to cost plan; absence of claims; rapid settlements; pro-active in value management; practical quality management systems; trained staff with relevant experience; sound health & safety policies vigorously implemented.
- **Effective internal organisation** - clear communications; sound administration.
- **Collaborative culture** - record of 'partnering'; focus on the Client's needs.
- **Appropriate human resources** - qualified and enthusiastic personnel available to do the job.
- **Supply chain management** - sound dealing with subcontractors/suppliers; established relationships.
- **Financial resources** - sound balances and cash flow; reliable references.
- **Proven track record** - sound, relevant and demonstrable

A variety of means are available for obtaining the information necessary to make a balanced and objective decision on selection. This can be obtained via questionnaires; references; in-house records from previous projects; presentations and interviews; visits to current sites and formal tenders.

Procedures for weighing the information obtained on competing contractors and reaching objective decisions will incorporate four key processes:

- **Setting thresholds for qualification** - to ensure that contractors invited to compete have the basic competence and capacity to deliver the project.
- **Comparing ability to add value** - typically by scoring contractor's attributes; weighting the scores to reflect the Client's priorities; evaluating the weighted scores to form a judgement.
- **Assessing price** - this will be limited when a contractor is to be selected early in a project but when a contractor is selected late in a project comparative prices will be available.
- **Balancing capability and price** - again this will be limited when a contractor is to be selected early in a project but when a contractor is selected late in a project comparative prices will be available and a weighted score for price can be added into the evaluation process according to importance.

The selection criteria are therefore measured in an objective manner by adopting clear and open procedures and records thus providing an audit trail.

## 6 IMPLEMENTING PARTNERING

The method of implementing Partnering is ultimately dependent upon the timing of the selection of the Partnering contractor which consequently dictates the contractual arrangement which is deemed the most appropriate to best meet the Client's objectives and priorities.

The alternative methods, together with an indication of timescales for each, are detailed in Appendix I and Appendix II to this report.

Notwithstanding the alternative methodologies, it should be noted that the alternatives commonly incorporate a Partnering Charter which formalises the partnering agreement between the parties.

A sample of a Partnering Charter is detailed in Appendix III to this report and the signing of this document, although it has no legal standing, focuses the intentions of the parties to work within a non-adversarial culture of trust and teamwork to the ultimate benefit of all the parties involved in the process. The Partnering Charter always contains reference to three essential features:

- **Mutual objectives** - mutual objectives must be agreed between members of the Partnering team. This recognises that by working together with a common purpose all the parties can benefit to a greater degree than if parties pursue individual interests in a competitive and adversarial manner. It is more beneficial to concentrate on getting the work done than it is to argue over who is to blame for problems.
- **Co-operative problem solving** - Partnering accepts that even with agreed mutual objectives that point everyone's efforts in the same direction, problems will undoubtedly arise. There is therefore a requirement to find a method of problem solving based on a co-operative search for solutions that leave everyone feeling that their interests have been taken into account. It must not be based on one party imposing an answer on the others or on legalistic arguments about rights, duties and liabilities. In other words, in solving problems, Partnering teams accept joint responsibility for their project and the outcome.
- **Continuous improvement** - The Partnering team must actively seek to achieve continuous improvements in their performance. The improvements should strive to provide better value for money and provide objectively measurable benefits for everyone in the partnering team. This is particularly important where 'Strategic Partnering' is employed.

## 7 ADOPTION OF PARTNERING BY ANGUS COUNCIL

Given the potential complexities of partnering and the fact that some forms of partnering represent a reasonably significant departure from the approach to procurement traditionally used by the Council, it is considered necessary to seek the approval of Members to the general principles before going forward with any specific projects.

Members will however be aware that the procurement arrangements for the replacement of curtain walling at Forfar Academy (report 1278/00 refers) did involve a partnering type approach to a limited degree due to the specific requirements of that project. The indications so far from that exercise within Angus Council and from other Councils that have adopted a partnering approach for particular projects have been encouraging. The first phase of the Forfar Academy curtain walling project was completed on schedule within a very tight timescale with the contractor working very closely with the school, Education HQ staff and Property Services staff. This approach also resulted in specific savings being identified, which were passed on to the Council.

### Pilot Project

Although the experience of the Forfar Academy curtain walling project to date is very positive, it is acknowledged that the partnering approach will require careful management to ensure that all areas of concern within the process are properly addressed. It is considered prudent therefore

to take this initiative forward cautiously by testing out the concept on a pilot project basis. This would provide an opportunity to allow the concept to be introduced to the local contracting industry without the Council making a firm commitment to the process prematurely. Once some experience has been gained by both the local contracting industry and ourselves, we can evaluate the success or otherwise of the approach. The evaluation would include consideration of the issues raised earlier in this report including customer/client satisfaction and overall value for money. The outcome of the review would be reported to the committee and depending on the outcome, the Council could give further consideration of the Partnering approach as to its suitability as an alternative to conventional procurement methods.

It is proposed therefore that if this report is agreed by the committee, officers identify in due course a suitable project to pilot the partnering concept and a further report on the selection would be brought to the appropriate committee(s) for approval.

## **8 FINANCIAL IMPLICATIONS**

The implementation of Partnering in alternative forms, could potentially result in the expenditure of additional staff time, however, it is initially anticipated that this can be absorbed within the existing Property Services staff resources. The resultant on-cost is presently indefinable until the entire process has been tested and this shall be closely monitored and, if required, identified as a separate fee charge.

## **9 FINANCIAL REGULATIONS**

The Council's Financial Regulations were last updated in May 2000 and, in the terms of the procurement of construction projects, set out the strict requirements under the "Contract Arrangements" Section. The adoption of Partnering by the Council would require a number of changes to the Financial Regulations to ensure that the process is clear, transparent and well understood. If the Committee are in agreement to partnering being added as a procurement method, it will be necessary to make appropriate amendments within the Financial Regulations prior to any projects being procured via partnering.

## **10 CONSULTATION**

The Chief Executive and all Chief Officers of the Council have been consulted in the preparation of this report.

## **11 CONCLUSION**

The vast majority of construction work carried out for Angus Council, and its predecessors Angus District Council and Tayside Regional Council, has been procured through competitive tendering with a great deal of success and without significant evidence of litigation. Contracts have also been procured through negotiation in its various forms but always using competitive tendering as a basis for agreeing the contract price. The single criterion for the recommendation of acceptance of a valid competitive tender has been to utilise the lowest price available thus ensuring public accountability.

This report conveys an alternative approach to the assessment and awarding of building contracts galvanised via the Partnering ideology.

The methodology for implementing Partnering via a Prime Cost Contract (Appendix I refers) is at a very early stage of usage within the construction industry and on this basis could currently be problematic to implement on complex several works projects although on straightforward projects this method may be appropriate.

Therefore, for complex projects the Design and Build Partnering methodology (Appendix II refers) would provide a natural step from established procurement procedures by continuing to ensure that fixed price competitive tenders are being obtained but with the introduction of the selection of the preferred contractor to include an assessment process where price is only one of a number of weighted criteria utilised to ultimately choose the contractor who can add the best value to the project.

The Director of Education has recently intimated his interest in the Partnering concept, having raised concerns pertaining to Education related construction projects, questioning if the best overall value is being obtained in terms of the delivery of the completed project where the lowest price is currently the single criterion for selecting a contractor and when, in essence, from an Education Department perspective, adherence with the overall project timescales, together with the timing of disruptive, noisy and dirty work activities, are the most important criteria for measuring a contractor's performance, albeit the price is also important.

Partnering in Education-related construction projects of a complex nature would therefore appear to be a logical area for the Property Services Department to initially implement the Partnering concept utilising the Design and Build Partnering methodology.

The Property Services Department currently procure window, heating, rewiring and kitchen replacement contracts for the Director of Housing which are very straightforward in construction terms and therefore appear to be a logical area to initially implement the Partnering concept utilising the Prime Cost Partnering methodology.

Before embarking on a range of projects procured by Partnering, however, it is recommended that we test the process on a pilot basis as outlined above.

## REFERENCES

Committee	Date	Article	Subject
Policy and Resources Committee	05.12.00	1278/00	Replacement of Curtain Walling - Procurement Details and Tender List
Education Committee	23.01.01	1278/00	Replacement of Curtain Walling - Procurement Details and Tender List
Personnel and Property Committee	30.01.01	1278/00	Replacement of Curtain Walling - Procurement Details and Tender List

## HUMAN RIGHTS IMPLICATIONS

There are no Human Rights Act implications specific to this report.

Any implication, as a consequence of discharging recommendations detailed in this report, will be managed in accordance with the standing procedures and processes established by the Property Services department.

## BACKGROUND PAPERS

No background papers, as defined by Section 50D of the Local Government (Scotland) Act 1973 (other than any containing confidential or exempt information), were relied on to any material extent in preparing the above report.



## **APPENDIX I - IMPLEMENTING PARTNERING**

### **contractor selected early in the project - Prime Cost Contract**

The methodology utilised for implementing a Partnering project based on a Prime Cost Contract would be as follows:

- Agree outline plans with Client and prepare detailed probable cost.
- Advertise publicly for contractors interested in executing the project, intimating the Partnering approach.
- Select the six most suitable contractors from list of applicants.
- Report to the Personnel and Property Services Committee recommending six contractors to receive 'first stage' tender documents.
- Issue 'first stage' tender document to six selected contractors.
- Interview six contractors after receipt of 'first stage' submission.
- Select two/three contractors for second interview.
- Select most suitable contractor as Partner.
- Commit to Partnership Charter.
- Produce detailed drawings/detailed design information.
- Agree Target Cost/Guaranteed Maximum Price and terms and conditions of contract with contractor.
- Issue 'second stage' contractual type tender document to contractor to obtain formal offer to execute the works.
- contractor submits formal offer with reference to agreed Target Cost/Guaranteed Maximum Price and terms and conditions of contract.
- Report to the Personnel and Property Services Committee recommending acceptance of the contractor's offer.
- Accept contractor's offer and Proceed with Construction Phase.

The initial assessment of the timescale from the placement of the original advert to the commencement on site is in the region of eight months.

## **APPENDIX II - IMPLEMENTING PARTNERING**

### **contractor selected late in the project - Design and Build Contract**

- Agree outline plans with Client and prepare probable cost.
- Advertise publicly for contractors interested in executing the project, intimating the Partnering approach.
- Select the six most suitable contractors from list of applicants.
- Report to the Personnel and Property Services Committee recommending six contractors to receive tender documents.
- Produce detailed drawings/detailed design information.
- Cost check design information against original probable cost and advise of any significant change.
- Issue tender document to six selected contractors.
- Six contractors submit formal offers.
- Select two/three lowest contractors for interview.
- Select most suitable contractor as Partner utilising cost as the most important criteria but taking account of other performance and quality related matters.
- Report to the Personnel and Property Services Committee recommending acceptance of the contractor's offer.
- Accept contractor's offer, commit to Partnership Charter and Proceed with Construction Phase.

The initial assessment of the timescale from the placement of the original advert to the commencement on site is in the region of six months.

## APPENDIX III - PARTNERING CHARTER - SAMPLE

### ANGUS COUNCIL WITH SPECIFIED CONTRACTOR

#### PROJECT TITLE

WE, THE MEMBERS OF THE PROJECT TEAM, INTEND TO MEET THE NEEDS AND EXPECTATIONS FOR THIS PROJECT AND TO ACHIEVE IT'S DELIVERY TO THE BENEFITS OF ALL PARTIES.

WE AIM TO WORK TOGETHER TO:

1. Deliver the project to the agreed specification, budget, timetable and standards of quality.
2. Practice teamwork, trust, respect, fair dealing, effective communication, openness and honesty.
3. Empower Team members to make relevant decisions.
4. Facilitate a planned, coordinated approach to achieve project completion on or before the planned project completion date.
5. Establish early warning systems and remedial procedures.
6. Provide all necessary skills to deliver the project.
7. Seek continuous improvement with appropriate research and innovation to support the project.
8. Define, manage and present the project with a responsible attitude towards the environment, the local neighbourhood and the health and safety of all.
9. Facilitate appropriate handover and training procedures for property and users.
10. Achieve job satisfaction for the whole Project Team.

#### Conflict Resolution

The Project Team commits to joint resolution of issues in a co-operative and timeous manner. Issues not resolved at a local level will be referred without prejudice to the Project Core Team for mediation and resolution. The Project Core Team will consist of the Director of the specified service, the Director of the specified contractor and the Director of Property Services.

#### Signed (Project Team members)

<u>Signature</u>	<u>Name</u>	<u>Position</u>	<u>Date</u>
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**This document is intended as a guide to encourage co-operation and trust and is not intended to have any legal effect.**

