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GENERAL: THE PPC2000 - A NOVEL APPROACH

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What is the PPC2000?

The PPC (Project Partnering Contract) 2000 is a suite of standard form contracts developed, in the United Kingdom, for use on construction projects. It was launched in September 2000, by Sir John Egan, the Chairman of the Construction Task Force responsible for the 1998 report 'Rethinking Construction', and later amended in 2003, 2008 and 2013. It is one of a number of tools recommended by Constructing Excellence (a construction industry membership organisation based in the United Kingdom) as a means of helping to implement collaborative working.

What distinguishes the PPC2000 from other, more typical standard form contracts, is that it makes provision for partnering between the various role players on the project, acting as a single contractual hub that allows all team members to contract on the same terms.

Employers (referred to as Clients), their agents such as the Engineer/Project Manager/Principal Agent (referred to as Consultants) and Contractors (referred to as Constructors) all sign a single multi-party contract. Specialist subcontractors then sign an SPC2000 agreement.

What is Partnering?

Partnering is described, in 'Rethinking Construction', as *"two or more organisations working together to improve performance through agreeing mutual objectives, devising a way of resolving any disputes and committing themselves to continuous improvements, measuring progress and sharing gains."*

Smith NJ¹ identifies four general barriers to partnering agreements:

1. A change in business conditions such as unanticipated technical problems, cost overruns and falling behind schedule may cause each organization to revert to the *"us versus them"* mentality;
2. There may be uneven levels of commitment from the different organisations forming the partnership;
3. The partnership may flounder where representatives of the organisations fail to nurture and develop it sufficiently; and
4. Where representatives of the organisations revert to past practices, they may fail to maintain open and direct lines of communication, thus failing to share necessary information.

David Mosey, the drafter of the PPC2000 Standard Form of Contract for Project Partnering (Amended 2013) argues that each of these barriers can be overcome through the use of clear provisions in the contract.

In particular, he suggests:

1. Regarding a change in business conditions:
 - a. A contractual entitlement to receive information as to cost;
 - b. A medium through which team members can share a common understanding of any problems; and
 - c. Possibly, a long-term framework relationship to justify the compromise of the parties' short term self-interest.
2. Regarding uneven levels of commitment:
 - a. A preconstruction agreement clarifying the parties' respective commitments and the way in which these can be relied upon.
3. Regarding lack of momentum:
 - a. Commitment to key dates for completion of activities during the preconstruction and construction phases;
 - b. The project manager demonstrating leadership in his/her requirements on adherence to deadlines; and
 - c. A medium through which representatives of each party can exercise peer group pressure in the event of any delay or other under-performance.
4. Regarding failure to share information:
 - a. The early establishment of a communication system that requires the parties to share required information, including open-book pricing, to build up detailed costs; and
 - b. Clearly agreed channels for communication and the appointment of consistent representatives for each party, operating within agreed terms of reference.²

How does the PPC2000 Work?

By signing a single multi-party contract, each of the parties thereto contracts with the other. The parties agree to work together in the spirit of trust, fairness and mutual cooperation for the benefit of the project, to fulfil their roles and responsibilities and apply their agreed expertise in relation to the project.

The PPC2000 makes allowance for the Contractor to undertake and be paid for certain specified preconstruction activities in accordance with the terms of a Pre-Construction Agreement, the format of which is included as an appendix to the document. This allows Constructors and Consultants to be appointed early in the design phase and to work in accordance with a single integrated timetable to achieve all necessary pre-conditions for commencement of the works.³

An open-book strategy, sufficient to establish progress against the Constructors KPI's and targets, is also required.

The Client remains responsible for payments to Consultants and the Constructor remains responsible for payments to specialists, unless they are appointed directly by the Client.

The team members are required to work together and individually to achieve a transparent and cooperative exchange of information in all matters relating to the

project and to organise and integrate their activities as a collaborative team. They are also required to keep specified records, which must be made available for inspection by other team members and any third parties stated in the contract.

The Client retains the right to issue instructions to the Constructor, including as to the opening up for inspection or testing of any part of the project and the rectification or replacement of any designs, works, services, materials, goods or equipment that are defective or otherwise not in accordance with the contract.

The PPC200, further, contains the usual clauses as to access, programming, variations (called changes), extensions of time and additional cost, each with its own focus on collaborative working.

The team members are required to establish a core group, which meets regularly to review and stimulate the progress of the project and deal with early warnings notified by any of the team members. Decisions are made by consensus and team members are obliged to comply with these decisions. The core group is given the opportunity to consider and comment upon designs.

Differences or disputes are dealt with by way of a problem-solving hierarchy, in terms of which each of a number of named individuals, in a listed sequence, has a specified period to agree a solution with the individuals listed above and below their respective names on the list, failing which the dispute is referred to the next person on the list.

Where resolution is not achieved to the satisfaction of all team members involved in the dispute, the core group meets. If still unresolved, the matter is referred to conciliation or mediation or any other form of alternative dispute resolution recommended by a Partnering Advisor, previously chosen by the parties. This is without prejudice to the parties' right to refer the dispute to adjudication at any time. If still not resolved, the dispute is then referred either to court or arbitration.

Application to South Africa

Improved performance and shared gains are obviously attractive to all the parties to a construction contract. Collaboration or partnering strategies, insofar as they assist in achieving this, therefore, require consideration.

If, however, the word "collaboration" caused you to raise an eyebrow, you are not alone. A study conducted (through self-administered questionnaires) by the University of Johannesburg, in 2015, concluded that *"[i]nexperience with collaboration and corruption were ... the biggest contributing factors that restrict the use of collaborative models"*.⁴

That is not to say that such strategies, with increased understanding and a change in attitude from the parties, could not be used to the benefit of all, in South Africa. Although rarely used, Clause X12 of the NEC3 has already introduced a form of partnering into one of the standard form contracts recommended by the CIDB.

If you are hoping for a test PPC2000 project in South Africa, however, you will be disappointed. The PPC2000 is drafted with only the United Kingdom in mind, specifically referencing English acts of parliament. This does not mean, however, that we cannot take lessons from its implementation in the United Kingdom and give greater consideration to our own form of collaborative contract.

¹ "Engineering Project Management", 2nd Edition, Blackwell, 2002, page 304

² King's College London, Module Course Notes, Collaborative Contracting under Partnering Contracts, 2017, page 9

³ K. Saunders and D. Mosey, 'PPC2000: Association of Consultant Architects Standard Form of Project Partnering Contract'

⁴ Masemeni, Aigbavboa and Thwala SACQSP2015-20