Relational Contracting and Principles underpinning Partnering Practices

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What & Why? - of my own focus today

Principles, Practices & Value

Generally:

• Sound Principles ➔ Good Practices ➔ Good Value

….. But if targeting Better Value ….. or Best Value ….

• Best Principles & Practices
  ➔ Higher Productivity & Sustainability ➔ Best Value

Specifically, in our typical industry scenarios:

• Relational Principles & Best Practices
  ➔ Integrated and Sustainable teams with Common Objectives / Value Focus ➔ Best Value
How? - of my coverage today

OUTLINE

• Why ‘Relational’ Contracts?
  - Principles & basis of Relational Contracting
  - Examples from Risk Management

• Principles & Practices – iterative improvements

• Practices, pitfalls and potential in Partnering
  and Partnering-type collaborative approaches
  - e.g. in Alliancing, Frameworks, IPD, RIVANS
  - (a) Globally, (b) in HK

• Ways Forward
CONTRACTS and RELATIONAL CONTRACTING (RC)

• **CONTRACTS** – essentially set out (a) who must do what, how, when ..
  + (b) their rights & obligations and **risks** + …

  **But** All can not be in ‘Black & White’ specially in our field - so our Contracts are ‘incomplete’

  e.g. Not all risks are foreseeable and quantifiable
  + some risks may be dealt with **better** by **JOINT RISK MANAGEMENT’ (JRM)**

  **RELATIONAL CONTRACTS**  >>  what is in ‘Black & White’

  Sets out Contractual basics as above + establishes:
  – Framework for reasonable ‘exchange’ in the future and JRM
  – Flexibility to jointly address uncertainties & complexities
  – Relationships among parties that help in above e.g. in JRM, joint problem solving & disputes minimisation

  Above also limits opportunism & enables innovations

  **Good Relationships also develop ‘Relational’ Obligations**
  e.g: (A) Western? - Handshake
  (B) Asian? - ‘written document is only a tangible acknowledgement of mutual obligations … rather than a precise definition of ….’

  **Example**: RC allows for GAIN / PAIN SHARE in TARGET COST Contracts
RELATIONAL CONTRACTING (RC) and Partnering

• Note: Some (e.g. in Australia) talk of ‘Relationship Contracting’; others talk of ‘Collaborative Contracting’ – all based on ‘Relational’ principles:

• Risks / Problems are dealt with jointly by:
  cooperation, restorative techniques, & adjustment processes
  - solves problems faster, better and maintains/improves ‘relationships’
  - virtuous cycle – improves relationships, morale and performance levels …
  - Reduces waste of time and resources e.g. in multi-layered / duplicated checks

• RC thus enables:
  – **win-win-win** - by identifying & pursuing **common Value Objectives**
  – monetary + non-monetary **satisfaction**
  – shift from adversarial culture to **co-operation / collaboration**

• RC principles underpin **co-operative working arrangements**
  – in **Partnering, Alliencing** (common in Australia), **Framework Agreements** (common in UK), **Integrated Project Delivery** (being used in USA)
  – Can and Should extend thru. whole Supply Chain

From RC THEORY to Principles and Practices:


**Applying RC Principles to Construction Practices** – since mid-late 1990’s: e.g. **HKU**, Hong Kong; Lean Construction Group, USA; …..
CONFLICTING OBJECTIVES AND DIVERGENT OPERATIONAL AGENDAS

‘Traditional’ Procurement & Delivery Strategies

Client ‘push’ forces e.g.
- Profitability
- Probity and accountability

Contractor ‘push’ forces e.g.
- Higher short-term profits
- Resource constraints

Client ‘pull’ forces e.g.
- Special needs e.g. economy, quality, timeliness

Contractor ‘pull’ forces e.g.
- Future opportunities
- Goodwill

Example of Force-field ‘against’ Relational Integration in a Client-Contractor relationship
CONVERGENT OBJECTIVES & OPERATIONAL AGENDAS

Strategies for Relational Integration and a Value focus

Client ‘push’ forces e.g.
- Profitability
- Resource constraints

Contractor ‘push’ forces e.g.
- Increased Short-term Profits
- Competition

Client ‘pull’ forces e.g.
- Recent Industry reforms
- Special needs

Contractor ‘pull’ forces e.g.
- Build track-record
- Goodwill

Potential Force-field towards Relational Integration in a Client-Contractor relationship
Benefits of RC - Examples from Risk Management

Principles of Risk Allocation?

- Jesse Grove Report (1998) on Hong Kong GCC
  - set out 4 Standards of Risk Allocation
  - Default, Foreseeability, Management, Incentive
  - largely similar to those in only Item 1 of foll.:

- ASCE (1979 Conference on Construction Risks & Liabilities sharing):
  1. Risks belong with those parties who are best able to evaluate, control, bear the cost and benefit from the assumption of those risks
  2. Many Risks and Liabilities are best shared
  3. Every risk has an associated and unavoidable cost which must be assumed somewhere in the process.

- Item 3 is highlighted by Michael Latham (1994) in ‘Constructing the Team’: ‘Risks can be transferred, accepted, managed, minimised or shared, but can not be ignored’.

Can JRM (Joint Risk Management’) address Item 2 (sharing):
  - effectively and efficiently .... through RC?
Benefits of RC - Examples from Risk Management

Why SHARE Risks?

- Not all risks are foreseeable or quantifiable – uncertainty, complexity
  - nature and extent of risks may change, new risks may emerge, existing risks may change in importance
  - some risks merit joint efforts of all contracting parties for more efficient management

- Target of risk management should be
  - to minimize the total cost of risks

- not the cost to each party separately

- Unforeseen risks need to be managed through JRM
  - as and when they eventualize
  - under flexible contracts - RC
  - using best available options
  - team efforts - if needed
  - to benefit the project and all parties ‘overall’ (‘net benefit’)
Survey on: **Risk Allocation** – in HK in 2000

- **Two questions**: re. perceptions on 41 risk items
  - present risk allocation *(owner & contractor)*
  - preferred allocation *(owner, contractor, JRM)*
- **47 responses** – cross-section of industry
- Details published
- **Relevant Summary Points:**
  - **Total sample**
    - All 41 identified risk items - recommended for JRM
    - 29 risk items recommended for 11-50% JRM
  - **Contractors**: 28 risk items need 11-60% JRM
  - **Owners/ Clients**:
    - 26 risk items need JRM of more than 10%
    - 2 risk items need JRM of more than 50%
    - Generally more positive than Consultants
Survey on: **Implementing RC and JRM** – from HK in 2001

- 92 Respondents from 17 countries
- Details published.
- Relevant Summary Points on **Management of Special Risks** (only):
  - JRM is the best option
    - irrespective of nature of unforeseen risks
    - risk management requires serious attention
  - Contingency & contractual adjustment
    - acceptable way to manage unforeseen risks
  - Opportunism is not a healthy option

**Suggestions for facilitating JRM:**

- Clear and equitable initial risk allocation
- Fair and practical adjustment mechanisms
- Teamwork based risk-reward strategy (e.g. Target Cost …).
- SOME RELEVANT EXTRACTS FOLLOW:
## Perceptions on ‘Management of Unforeseen risks’

<table>
<thead>
<tr>
<th>Dealing with unforeseeable &amp; unquantifiable risks</th>
<th>Options</th>
<th>Score (from 10)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Provide <strong>contingency</strong> in contract and assign to the <strong>contractor</strong> when they materialize</td>
<td>5.71</td>
</tr>
<tr>
<td></td>
<td>Provide <strong>contingency</strong> in contract and assign to the party 'best able to handle', when they occur</td>
<td>7.79</td>
</tr>
<tr>
<td></td>
<td>Risk sharing or JRM, if needed</td>
<td>8.43</td>
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</table>
Perceptions on ‘Management of Complex risks’

<table>
<thead>
<tr>
<th>Dealing with foreseeable &amp; quantifiable risks</th>
<th>Score (from 10)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Options</td>
<td></td>
</tr>
<tr>
<td>No need to take any burden; assign it to the other party(ies) by contract</td>
<td>3.45</td>
</tr>
<tr>
<td>If given opportunity – assume the risk, reluctance of other party could help to profit more (i.e. opportunism)</td>
<td>4.60</td>
</tr>
<tr>
<td>Risk sharing or JRM, as needed</td>
<td>8.69</td>
</tr>
</tbody>
</table>

*Note:* Similar pattern (JRM most favoured) from question on ‘Management of Changing risks’
Foregoing Surveys & related initial findings ..... Built upon by ..... further Research and Development (R&D) - Examples from HKU:

• Another Survey from HKU in 2004 - across Hong Kong + 4 countries (Australia, Netherlands, Singapore and UK) on: Factors Facilitating/Impeding RC and Factors Facilitating/Impeding Integrated Project Teams

• Many interesting findings & developments, e.g.:
  - indicate clear trend towards Relational practices and Integration ... and RC?
  - benefits recognised, but inertia + apprehensions retard uptake
  - Culture change is critical
  - Caveats - must guard against misunderstanding of intent, and/or deliberate abuse e.g. in team selection, collusion, ...
  - So need revised protocols (in contracts, codes, guidelines ...) and practices

Examples:

(1) Many Case Studies on key/ critical aspects e.g. on ‘weak links in partnering’; on building a ‘Partnering Knowledge Base’, ...

(2) HKU CICID set up a Study Group in 2007 with overseas and industry partners for R&D into ‘Legal Aspects of Relational Contracting’ (LARC) – in areas of contractual rights, remedies & other legal ramifications of Partnering, Alliancing & other forms of Relational Contracting [http://www.civil.hku.hk/cicid/7_people/group_LARC.pdf]
Principles and Practices
– where do they come from?
Which comes first? Principles or Practices?
Snapshots from Practice - Growth of Partnering (in Construction Industries)

GLOBALLY

• Emerged as ‘Project Partnering’ in some US Army Corps of Engineers projects from late 1980’s (but traced to other origins … by other names e.g. in Japan …. Asia)

• Some definitions e.g. from Reading Construction Forum, UK

• Some core principles – co-operation, trust, mutual objectives, fair dealing, good faith, commitment to project – set out in ‘relationship guidelines’ + important aspect – intent for risk-sharing (Doug Jones, 2002)

• 7 pillars – Strategy, Membership, Equity, Integration, Benchmarks, Processes, Feedback

• First differentiated ‘Project’ from longer term ‘Strategic’ Partnering; overlapped with mapping of 1st, 2nd (and 3rd) ‘Generations’ of Partnering - towards more integration

• Non-contractual ‘Bolt-on’ Clauses or Umbrella agreements JCT FA

  Contractual Partnering

e.g. NEC, PPC 2000 (multi-party ‘Project Partnering Contract’ – Assn. of Consulting Architects), JCT ‘Be Collaborative Contract’ (BCC), ConsensusDOCS (USA)
Snapshots from Practice - Growth of Partnering - in HONG KONG

Hospital Authority (1994), MTRC, Private Developers, Works Projects …

ETWB Practice Note on Non-Contractual Partnering (revised June 2006)


NEC Trials in Govt. Projects

(Note: NEC has been used before in HK, e.g. by Jockey Club)
Non-Contractual Partnering:

**Partnering Charters**

in Hong Kong:

from 1994
Developments in/ from ‘Partnering’ – *Beyond Partnering?*

**IN CONSTRUCTION INDUSTRIES**
- **Alliancing** – started in Oil & Gas Industry – now very popular in Australian construction industry
- **Frameworks** (framework agreements) - increasing in UK e.g. British Airport Authority, Highways Agency, Water/Waste sector
- **Integrated Project Delivery** – initiated by AIA (American Institute of Architects) and promoted by Lean Construction groups in USA

**IN GENERAL**
BS 110000:-1:2010 on ‘Collaborative Business Relationships’
e.g. Part 1: A Framework Specification – to provide a strategic framework …collaborative relationships … enhanced benefits to all stakeholders
+ Provides detailed Guidelines & checklists etc. on Relationship Management - of multi-dimensional relationships;
  Joint Risk Management
etc.
NEC and Partnering

- ICE Council decided (Sep. 1985) ‘to lead a fundamental review of alternative contract strategies for civil engineering design and construction with the objective of identifying the needs for good practice’
- NEC is designed to stimulate good management of relationship between the two parties to the contract and, hence, of the work included in the contract; be simple to understand and use … in different situations, ….
- Provides for ‘contractual partnering’ with specific Partnering options, modalities and opportunities e.g. with ‘target costs’ ….
- Also, in general: Core Clause 10.1 – “The Employer, the Contractor, the Project Manager and the Supervisor shall act as stated in this contract and in a spirit of mutual trust and cooperation”
Why RIVANS? – more than Super-charged Supply Chains?

*Relational Integration through* joint focus on identified common (network) *Value* elements.

Concepts developed in HK - from both principles & practices

Related studies now in progress
(a) in S’pore, HK, Beijing & Australia – focusing on potential for ‘RC frameworks’ and ‘Relational Practices’ in public sector projects

(b) In HK on RIVANS for TAM (Total Asset Management) i.e. also linking to O&M supply chain/ value network
RIVANS – Relationally Integrated Value Networks - VISUALISATION

Conceptualising a ‘large’ (ongoing) Client’s RIVAN
Extending RIVANS to **Total Asset Management** (TAM)  
**RIVANS for TAM** – ongoing - initial findings from Questionnaire  

**Note**: Case Study and Interviews are ongoing in HK with parallel ongoing studies in Singapore and the UK

- Main aims: a) identify **synergies and added value** through .... collaboration between those engaged in *Infrastructure Project Management (IPM)* and *Infrastructure Asset Management (IAM)*; and (b) develop **concepts and working arrangements** for RIVANS for TAM ....

**Examples** from first 99 responses: **Highest level of agreement on:**

- **Better value/synergies arise from:**
  1) sharing relevant information, (4.4 /5);
  2) life-cycle optimization (4.4 /5);
  3) addressing sustainability issues together(4.2 /5)

- **Most important common goals in achieving better value:**
  1) Common project goals – e.g. cost, quality, time, safety (4.6 /5);
  2) effective and efficient information sharing (4.4 /5);
  3) efficient resource utilization & management (4.2 /5)

- **Clients are most important stakeholders for deriving better value**
Potential PITFALLS in PARTNERING?
Won’t Partners get too ‘close’ & ‘comfortable’ at times / after some time and then less efficient?

Aim for CO-OPERATION + COMPETITION = CO-OPETITION?
- co-operate to be more competitive together, hence compete better ‘against’ other networks
- create a bigger pie, and divide it equitably

e.g. A politician from one superpower (2007):
“guiding principles of relations (with another superpower she was visiting) are:
“pragmatism and mutual interest”
– can be same for partners in partnered contracts/ alliances/ frameworks/ RIVANS?

e.g. smoothen transactions, reduce waste & duplications e.g. in supervisory layers …

But beware (a) empty promises and mere nice words ‘partner-speak’,
(b) complacency, (c) abuse, e.g. in collusion, (d) loss of efficiencies …..

Culture change and long term commitments imperative - for meaningful Partnering
Visualising Progression in Partnering

**Partnering continuum**
Extending Progression in Partnering

**Partnership continuum**

Next Steps? – Co-opetitive Networks? e.g. RIVANS .... RIVANS for TAM?