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Partnering: A good approach to dispute resolution in construction management

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ABSTRACT

The main objective in the construction industry is to deliver a high quality project within the schedule, on budget, safe manner, and with the least number of conflicts, disputes, claims and litigation. However, due to the risky, uncertain and competitive nature of construction industry, conflicting goals among the different participant parties involved in a project are bound to cause them only think for their own interests and benefits, in many instances this may leads to the number of disputes rise, and then maybe the expensive claims and costly litigations, so to a great extent the projects can not be completed within time and on budget. In recent years, many projects had adopted the approach called “partnering” to make a good relationship within all participant parties so as to collaborate well to manage or resolve the disputes. The partnering approach indicates the fact that the best dispute resolution strategy is to prevent disputes or conflicts from occurring, and to resolve conflicts at the lowest possible levels. Therefore, one of the main benefits of partnering is to encourage all parties to change their relationships from traditionally adversarial to cooperative, and facilitate the dispute resolution by some useful mechanisms. This change in relationships requires changes simultaneously in attitudes to achieve mutual trust, respect, and open communication among all parties involved in the project. This paper reviews the partnering literature within the construction field and tries to make a comprehensive picture of benefits of the partnering practice, presents and describes how partnering approach facilitate the dispute resolution process.

KEYWORDS: Partnering; Dispute resolution; Construction Management.

1. INTRODUCTION

Construction industry is a fast growing sector of every country's economic development, and there have been more and more large and complex construction projects under construction around the world, it is evident that construction industry around the world has become more and more important for economic fast growth. But the nature of construction industry is competitive, high-risk, uncertain, so construction management is very important and crucial for construction industry's fast growth and success. The main objective in the construction industry is to deliver a high quality project within the schedule, on budget, safe manner and with the least number of conflicts, disputes, claims and litigation.

Due to the nature of construction industry referred above, there are always many issues happened unforeseeably and lead to some disputes arise, if the disputes can not be resolved properly, it maybe resorts to the litigation and arbitration after the completion of the project, but these resolution methods will influence the cost and schedule of projects significantly, and further cause the relationship between those parties to a much more confrontational and intense situation. According to the opinion of Crowley and Karim (1995), they thought that current contracting and procurement practices, especially the most prevalent procurement method—low bid procurement makes all the contracting parties in adversarial situations. And Abudayyeh (1994) held the similar opinion that contracting in the construction industry is so competitive and high-risk that the existing conflicting objectives among those participant parties involved in the projects lead to adversarial, confrontational and unfriendly relationships, and such bad relationships will lead to many disputes happen and fundamentally influence project success, so the main objective of delivering projects timely and effectively will be jeopardized.

To achieve to manage a project successfully, new attitudes and new construction management patterns need to be introduced to change current adversarial and confrontational situation between all the contracting parties. So the concept of partnering

relationship emerged for about two decades and it has been developing quickly and adopted in more and more countries and projects.

2. PARTNERING RELATIONSHIP

Construction management has many facets, partnering relationship or partnership is one of these important facets. There are so many pieces of research of partnering in the developed construction markets have been reported in recent ten years (Conley and Gregory, 1999; Green, 1999; Kwan and Ofori, 2001; Li, Cheng, and Love, 2000; Li, Cheng, Love, and Irani, 2001; Wong and Cheung, 2004), it indicates that partnering relationship and partnership in the field of engineering especially in the construction sector have been becoming a more popular and significant topic, so many researchers have published many relevant papers and reports to present their opinions in the concept of partnering and partnership during the last two decades.

2.1 Definition of partnering

Concept of partnering has developed for many years in different countries and industries, and a good number of researchers had tried to make a universal definition for partnering, but till now there is still not an agreement and a precise definition of partnering, but there are some famous and most frequently cited definitions existed. For example, The Construction Industry Institute (CII, 1991) in the United States developed a definition which is cited widely by many scholars, it considers partnering as “a long-term commitment between two or more organizations for the purposes of achieving specific business objectives by maximizing the effectiveness of each participant resources. This requires changing traditional relationships to a shared culture without regard to organizational boundaries. The relationship is based on trust, dedication to common goals, and an understanding of each other’s individual expectations and values.” Another important and classical definition was presented by

Bennett and Jayes (1998), they concluded partnering as “a set of strategic actions that deliver vast improvements in construction performance. It is driven by a clear understanding of mutual objectives and co-operative decision-making by a number of firms who are all focused on using feedback to continuously improve their joint performance.” Naoum (2003) also suggested a relatively newer concept of partnering, it is that “partnering is a concept which provides a framework for the establishment of mutual objectives among the building teams with an attempt to reach an agreed dispute resolution procedure as well as encouraging the principle of continuous improvement” (Naoum, 2003, pp.71).

Although there is still not a precise definition for partnering, but many similarities can be concluded from these definitions, such as it is a long-term dynamic process, it will create a trust-based and harmonious environment, it needs all parties to make commitment to joint objective of the whole project, and so on. Chan, Chan and Ho (2003) pointed out that the fundamental elements of partnering are commitment, trust, mutual respect, communication and equality. So even there is not a sole definition for partnering, it also can be seen as an agreement on the definition has been reached. In the recent few years, researchers and scholars had transferred their interests to the benefits and mechanism of partnering, the question that how partnering facilitate or influence the project performance has been paid much more attention and investigated frequently.

2.2 Benefits of partnering

Refer to the benefits of partnering, many papers and reports from a wide range of researchers can be found and make a good picture of the benefits. Many aspects can be concluded, partnering can foster trust and open communication between the contracting parties, these are the most important two issues. Crowley and Karim (1995) stated that partnering can create cooperation, avoid adversarial confrontation, develop an attitude of rapid dispute resolution and develop the integrated evaluation system of project performance, it is a good means of resolving interorganizational disputes. Abudayyeh (1995) indicated that the new approach “partnering” will lead to establish a dynamic process for conflict resolution, and

common commitment, trust and mutual respect are important determinants for project success. Ng (1997) presented his opinion on the benefits of partnering in the construction sector that the avoidance of some cost and quality problems due to sharing risk between those participant parties. Black, Akintoye and Fitzgerald (2000) believed that partnering can compress the normal learning curve and so as to reduce the normal costs of developing and sustaining a fine relationship. In brief, partnering is a new and good management pattern to change the current adversarial and confrontational situation in the construction industry.

3. THE MECHANISM OF DISPUTE RESOLUTION

In the construction industry, there are really many disputes and conflicts existed and need to be solved properly, otherwise the main objectives of construction projects—cost, time, quality, will be influenced. All parties involved in the project must recognize that each party is a part of both the dispute and the resolution of the problem, only the parties acknowledge this principle, they can make a commitment to dispute resolution.

Crowley and Karim (1995) indicated that, in the approach of partnering, trust can develop confidence between the participant parties, encourage and facilitate open communication, improve idea exchange, and knowledge and technology sharing, in addition, long-term commitment fosters continuous improvement of technology and methods, strengthens the mutuality of the parties, meanwhile, also reduces the confrontational and adversarial relationship and the attractiveness of litigation and arbitration, so friendly relationship among the parties can be brought up.

In the current time, due to the confrontational relationship between the parties, the disputes and conflicts can not be solved in a friendly and open environment, they are usually resorted to litigation and arbitration after the project is completed, which are cost-consumed and time-consumed. These two methods of disputes resolution are significantly harmful to the project

performance and project success. However, the partnering approach indicates the fact that the best dispute resolution strategy is to prevent disputes or conflicts from occurring, and to resolve conflicts at the lowest possible level and at the earliest possible time.

Partnering is not a formal contract among the contracting parties, it is an informal one which has some good techniques and mechanisms in facilitating the project implementation. First, the partnering workshops and regularly periodic meetings will provide the parties good opportunities to communicate with others in a friendly and cooperative environment, and the problems can be reflected timely to all the parties and all parties have duty and commitment to join in the process of dispute resolution. In the regular meeting, whatever weekly, monthly or quarterly, honest, open, frank communication and conflict resolution is encouraged to let all practitioners participate in the process and share their opinions and good ideas.

Second, Anvuur and Kumaraswamy (2007) pointed out that, the problem in the construction sector is a lack of recognition rather than the absence of functional interdependence. Partnering approach tries to reinforce recognition of interdependence, so the partnering charter and the joint decision-making procedures are totally required, to offer a testimony to the joint recognition of interdependence among all the members. They are necessary supplements of the project contract which places the parties in the adversarial and confrontational situation and hinders the relationship develop towards the real direction. Pettigrew (1998) also emphasized that mutual responsibility can naturally grow out of working together with a joint objective and a shared goal within all the members.

But there are also some debates and arguments on whether partnering can really bring the supposed benefits and project success. Bresnen and Marshall had several papers to present their opinion on partnering relationship. Bresnen and Marshall (2000a) pointed out that partnering and other related forms of cooperation had been considered as an important way to deal with the fragmentation and lack of cooperation in the construction industry, but the research and reports just remained at a prescriptive level, and empirical evidence about the implementation of partnering in practice were still very few and anecdotal. So it is difficult to

measure actually how much observed disputes well resolved are related to partnering directly (Barlow, Cohen, Jashapara and Simpson, 1997). Bresnen and Marshall (2000a) also indicated that most of the literature on partnering had focused mainly on experiences in some developed countries, such as UK, USA and Australia, and suggested the intention to investigate partnering in other national contexts should be cautious. Partnering requires the organizational culture transformation to suit for the mutual objectives, but the problem is that the organizational culture is well established and it is difficult to make changes within organizations, let alone between them, organizational culture is not simply a variable that can be manipulated in the way that structures or other systems can be changed (Bresnen and Marshall, 2000a, b). Bresnen and Marshall (2000c) debated that whether or not single project partnering is feasible, so whether it is applicable in dispute resolution in a single project is worth of making more investigation on it. Through these papers, it can be found there are some different opinions on the real benefits and limitations of partnering, so the research on partnering should consider these important views, and have critical thoughts on all of the literatures.

4. CONCLUSION

The dispute resolution strategy of partnering is to focus on the conflicting parties instead of on the organizational interface where the conflict emerges. However, partnering can be considered as a new organizational structure that steps over the current interface between the participant parties in the construction project (Crowley and Karim, 1995). The very intention of dispute resolution in the approach of partnering is to lead the members engage in the confrontational relationships to reorganize the interface and radically improve their ability to handle with the inter-organizational conflicts (Crowley and Karim, 1995). But partnering can not solve all the conflicts and disputes directly, it tries to build a trust-based and harmonious environment in the project which is vital to dispute resolution, and provides some informal mechanisms to facilitate the contract implementation.

This paper is most like a literature review and a descriptive picture of how partnering can facilitate the process of dispute resolution, but in this paper there is no empirical data to prove the extent partnering can bring to project performance. Whether the disputes are settled well is crucial to project performance and project success, such as fundamentally cost performance, time performance and quality performance, so more attention should be put on this field and much more empirical evidence are required to confirm the truth of that partnering can really have a good impact on and facilitate dispute resolution, and further promote project performance.

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