

# Construction contract administration essay sample

[Business](#), [Management](#)



The Australian construction industry has experienced dissatisfaction among the involved stakeholders. The industry has been underperforming due to its low profitability caused by conflicts within. The industry needs improvements now that it has had conflicts in many of the procurement models that help in construction work. The construction industry has been admonished to embrace management concepts that are modern such as partnering and alliancing. Emphasis is mainly placed on stakeholders getting involved in decision making at an early stage. The stakeholders in this case include the contractors, clients, as well as building users. Creating a pro-active project environment, through management change, ensures that disputes are unlikely to occur (Yousefi 2009).

## **Partnering**

Partnering can be defined as a process that establishes moral agreement between project team members, together with a moral framework that assists in its implementation. Most of the processes adopted in partnering originated from the Japanese Construction Industry. Partnering allows people to minimize conflict when they are working on a major project. This method unifies parties into a team. Partnering is like a code of conduct that is stressed by CIIA (Construction Industry Institute Australia). It is not a contract, but rather an agreement intended to shape a culture that is non-adversarial in order to promote a relationship, which is 'win-win' between the involved parties. Partnership relationships are based on mutual trust, dedication to similar goals, and understanding of one another's values and expectations.

## **Pros of partnering**

Partnering in construction companies has been advocated for by many people due to its success, it ensures confidence and self-assurance. The term means making friends and it pays off to come into partnership.

Partnering in Australia (construction industry) has led to reduction of costs with substantial waste being reduced from the industry's supply chain through the opportunities that come with partnering. This can lead to positive outcomes because of the trusting working relationships. Partnering is also preferred since it is a better tool of conflict management. A binding decision in partnering is advantageous because the involved participants are certain of the outcome. Participants do not use much emotional energy because responsibility is moved to the third parties. Partnering has worked well in the construction industry whereby projects get completed in time and within the set budget. Partnering helps in that the involved parties do not have to go to the courts of law. Courts of law are known to delay; hence time wastage. Court cases can take up to ten years, or even more but the alternative methods can work out within days. The lengthy process of the courts do not have to be followed because the parties use processes such as adjudication, litigation, negotiations among other alternative dispute resolution methods. Alternative dispute resolution methods are likely to lead to improved understanding among parties because the two parties get a chance to explain their thoughts and feelings freely. This understanding, further contributes to good performance.

## **Cons of partnering**

The main demerit of partnering, experienced in Australia is that all undertakings by the parties, however well intended and genuine, become overtaken by the existing formal contractual relationship when major problems arise. Partnering works well when it is used to resolve minor disputes. However, in case the dispute is serious and hard to resolve immediately using the laid down procedures, a problem arises. This is because at this point, the involved parties revert to their formal position, which is described in the adversarial language in the contract. Under such circumstances, the situation turns to be more poisonous than in a situation where partnering has not been adopted. Partnership develops a sense of trust between parties. Therefore, reversion to the formal position that is associated with strict enforcement of the initial contract leads to the sense of disappointment, as well as betrayal. This in deed has led to poor performance of the construction industry because reversion means that the two parties cannot work under mutual trust since it leads to mistrust. This further leads to lack of cooperation, which results to delay of projects, low quality work and mismanagement (Chan 2010).

## **Alternative methods of dispute resolutions in Australia**

It was put in force in 2004 as an Act named Building and Construction Industry. Negotiation is the oldest method of dispute resolution that is commonly used when attempting to resolve conflicts. Direct negotiation is, in fact, original, cost effective, and reliable way to resolve disputes. The two disputed parties need to come together in search for a solution. The process is not binding, but the participants are free to produce a legal binding

contract in order to conclude the negotiation. The process of negotiation does not have a definition. The two parties can come together to negotiate and a third party can be involved in order to intervene. Direct negotiation is preferred because of privacy and independence (Walker 2002).

## **Adjudication**

This is a method of dispute resolution that is used in the construction sector around the region of Oceania. The construction industry in Australia has a hierarchical chain of contracts. Therefore, when one party fails to make payment, the whole process gets destabilized. The adjudicator is responsible for deciding the rights of each party in the construction contract. The aggrieved party simply takes the case to the adjudicator who makes the necessary judgment following the evidence at hand. The two parties must also be called in order to satisfy points of contention.

In Australia, adjudication as an alternative method of dispute resolution has been used in Queensland, South Australia, Australian capital, New South Wales, Tasmania, Northern territory and Victoria Adjudication Payment Act. Benefits of adjudication are several. First, the process is quick. Second, it allows for disputes to be resolved as soon as they arise. Another advantage is the fact that the process gives clear conclusions because the adjudicator gives a binding decision that must be accepted by the two parties (Chan 2010).

## **Expert witness**

An expert witness is a person with a lot of knowledge and experience, regarding the dispute at hand. He should be able to give expertise evidence

to a tribunal. The evidence must be either written or in the oral form. Both parties in a construction dispute can make use of their own experts.

However, single joint experts are being encouraged. This gives the involved parties a chance to limit the costs of expert evidence, which further keeps the costs of litigation as low as possible. Advantages of appointed expert witness are expertise evidence, trained professionals, and a range of services. Usually, there are two methods of obtaining an expert witness. The party requiring an expert witness selects an expert from the Expert Witness Registration Scheme (EWRS). The party requiring an expert can apply to Royal Institution of Chartered Surveyors Dispute Resolution Service (RICS DRS) to obtain a qualified expert at a fee, referred to as administration fee (Duffield 1998).

## **Arbitration**

This is a useful form of dispute resolution, popularly used in the construction industry. Arbitration is a process whereby the parties that are in dispute agree to follow decision made by a third party, which must be independent. The arbitrator acts as the judge, but most of the procedures followed are not very formal. The final decision made by the arbitrator is based on the available evidence, as well as the arguments given by the parties. Under arbitration, construction disputes are solved and settled quickly. This is because the process is private and informal.

However, a chartered solicitor / surveyor can represent the two parties. Professionals also act as arbitrators, which is yet another advantage. In arbitration, the parties that are involved in a dispute must agree that the

decision made by the arbitrator is final. Arbitration is made through lease or contract. Again, the parties can arrive at an agreement when a dispute arises. In order to obtain a qualified arbitrator, application must be made to the RICS DRS an arbitrator has the power to decide on the party that should pay arbitration costs, his fee, and fee relating to the other parties. Both parties may be required to pay the fee, but if one party is unsuccessful, the unsuccessful party pays the costs (Chun 2010).

## **Mediation**

Mediation refers to a confidential process in which the parties that are in dispute call upon a neutral individual who facilitates negotiations with an intention to achieve a resolution to the conflict. Mediation takes place when the two parties are unable to reach a conclusion by ending in a deadlock. Negotiation is usually confrontational because the two parties want to win. A mediator aims at principled negotiation by making the parties in dispute collaborators in coming to a conclusion. Discussions with a mediator must be private so that the parties get the confidence to reveal their interests (Duffield 1998).

A mediator comes up with ways that the parties can use to satisfy their needs. The two parties lose nothing when the decision is made. Disputes that can be resolved using mediation method include valuation, land boundaries, building work, tenant rights and obligations, professional negligence claims, commercial landlord rights and obligations, disputes related to residential leasehold, partnership disputes, land boundaries, among others. In most cases, the two disputed parties in equal amounts pay the mediator's fee.

Mediation process is fast, inexpensive and much cheaper than taking the case to a court of law (Walker 2002).

## **Conclusion**

The construction industry faces several conflicts that need to be resolved to ensure smoothing and successful running of the industry. Several methods have been adapted in an attempt to resolve disputes. Partnering has been emphasized and this involves an effort to solve a problem in a collaborative way. The process aims at team building approach as a way to manage projects. Partnering replaces adversarial relationships with better and improved working relationships. Alternative Dispute Resolution (ADR) comprises of several techniques that assist in settling disputes. These techniques include negotiation, arbitration, negotiation, and obtaining expert witness. The techniques are cheap, fast and, in most cases, they lead to acceptable decisions by both parties. The techniques are also preferred because they preserve relationships rather than terminating them.

## **References**

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