

History and Philosophy of the AMC Model Partnering Process

I. History (a.k.a. “The need for partnering”):

A. The past few decades have seen a dramatic rise in contract litigation. Litigation was consuming more and more time and money as cases experienced an increasing delay in obtaining a court decision. Even alternative forums, such as arbitration or Boards of Contract Appeals were becoming more expensive, and often took years to obtain resolution.

B. Similarly, in government contracts, litigation had steadily increased due to long entrenched adversarial attitudes between the government and its contractors. This adversarial attitude was understandable considering:

1. The confusion over authority to discuss and negotiate with contractors,
2. The rising fear of reprisal or condemnation by the IG, GAO, supervisors, or the public for the appearance of “giving away the store”,
3. The publicity of contractor criminal conduct (such as operation Ill Wind or Wedtech)

C. In the early 80's, some private industry companies (such as Dupont, Flour Daniels, Shell, Kellogg, Bechtel) began looking for a better way to manage their projects, and to reduce the adversarial approach to their contracts. The concept of inter-organizational team building began and was developed into a philosophy and process that the parties to a contract could adopt to reduce the potential for litigation.

D. The construction industry found itself with the dubious honor of having the highest rate of claims and litigation. In response, the construction industry began developing the partnering concept in the mid to late 80's. The Construction Industry Institute as well as the U.S. Army Corps of Engineers developed and promoted a partnering model for construction and A/E efforts with great success. By the early 90's, numerous projects had been partnered and statistical comparisons of partnered versus nonpartnered contracts revealed that partnered contracts not only experienced less litigation, they also had fewer injuries, cost overruns, time overruns, paperwork, and contract changes while experiencing higher VECP's and employee morale.

E. In 1991, the Industrial Operations Command began experimenting with the construction industry model to utilize the concept on a variety of other contract types. Partnering was inserted into the Chem Demil program on several O&M contracts, and the 120mm mortar program and the Hydra 70 Rocket System utilized partnering on production contract efforts. As a result of lessons learned from these programs, it became apparent that a partnering model would be beneficial on virtually all AMC contract types. In 1996 AMC put together a Partnering Team to develop an AMC model partnering program and to provide partnering training and support to AMC programs at the various subordinate commands. Based upon lessons learned from additional pilot programs at the other MSC's (the ASV at TACOM,

the BRAC Revitalization effort and BCIS EMD at CECOM, among others), and interviews with experienced partnering participants, the team developed the AMC model partnering process and published "Partnering for Success, A Blueprint for Promoting Government-Industry Communication and Teamwork" in April 1997 as a "how to partner" guide to those involved with AMC programs.

F. Partnering is continuing to grow nationally and internationally both within the construction field, and now on other contract types. Likewise, partnering is growing within the DOD communities as the benefits of partnering are recognized. While it will take time to provide widespread measurable results from the use of partnering on AMC programs, discussions with AMC program participants indicate that partnering has helped significantly cut decision time and paperwork, and has reduced schedule delays and program costs.

II. Philosophy:

A. Partnering is primarily an attitude adjustment, where the parties to the contract form a relationship of teamwork, cooperation, and good faith performance. Partnering requires the parties to look beyond the strict bounds of the contract to formulate actions that promote the overriding common goals of the parties.

B. This concept is not unique. It is similar to when we pick a partner at the company picnic and enter the three-legged race. The partners have their legs tied together and know they must reach the finish line. But if the parties run in different directions, if the parties don't start at the same time and on the same leg, if the parties don't hold each other up and keep each other out of potholes on the path to the finish line, neither will finish successfully. Your contracts will be the tie that binds you to others. Accordingly, we need to work together, communicate our expectations, agree on common goals and methods of performance, and identify and resolve problems early on - before they bring you both to the ground.

C. If the project owner puts a quality contractor out of business, or backs them into a corner by creating unnecessary financial hardships, the result becomes increased claims as the contractor strikes back, or the inability to gain competition and quality performance on future requirements. Similarly, a "grab what you can get" attitude toward contract performance will not sustain a contractor's long term business or reputation. Both parties have a vested interest in mutual cooperation and meeting the needs of their contractual partners. An adversarial relationship may hinder or destroy these overriding interests. Accordingly, it is mutually beneficial to establish a "we", rather than an "us and them" attitude.

D. In short, partnering can be viewed as "A project specific inter-organizational dispute avoidance process."

1. "Project Specific" because the Competition in Contracting Act and Antitrust legislation does not allow the government to make long term commitments to

individual companies. While the process will be limited to an individual contract, the benefits of having partnered will incidentally carry over to other business.

2. "Inter-organizational" because partnering works to join different organizations into one team for efficient project completion.

3. "Dispute Avoidance" because partnering works to eliminate the root causes of conflict, which not only result in litigation, but eat away at all facets of successful performance.

4. "Process" because philosophy is not enough. We must change our actions to reap the benefits of partnering. By developing a process to follow, we have a tool to create change rather than to simply talk about it.

E. The philosophy behind partnering stems from a variety of sources combined to improve the successful accomplishment of inter-organizational projects. These sources include contract interpretation, "win-win" strategies and interest-based negotiation, synergy, team building and conflict resolution, project management, and acquisition reform.

1. Contract Interpretation: Our contracts define the legal relationship of the parties. Partnering focuses on the working relationship of the parties. Partnering does not affect the rights and responsibilities established in the contract, but does help the parties focus on what the contract is intended to accomplish. One of the most basic premises of contract law is to interpret the contract to reflect the intent of the parties. Over the years, parties to a contract have begun to rely exclusively on the terms of the contract to determine the parties' performance responsibilities. While reliance on the contract to determine legal responsibilities is appropriate, contracts may not always clearly reflect what is envisioned by the parties as successful project completion and legal contract interpretation maxims might not provide the result desired by either contract party. Partnering helps with communication between the parties so that disagreements over contract interpretation are avoided.

2. "Win-win" strategies and interest-based negotiation: Americans have traditionally been raised on a philosophy of "win-lose". Founded in competitive sports, we have grown to believe that you must use whatever strategies you can to come out ahead, often at the loss of the other side. Even compromise results in giving up, or losing, some of the gains desired by each side. When contract parties do not trust each other, or if a contract partner is viewed as an adversary, the parties often take strategic "positions" and hold back information that they feel may be detrimental to those positions. Interest based negotiation anticipates that the parties will communicate their true needs rather than just a stated negotiation position. Often the parties find that both sides' true needs can be met through creative problem resolution, while the stated negotiation positions are often diametrically opposed. Partnering fosters communication between the parties that allows the sides to work together to meet the true needs of both sides, and recognizes that the contract partner is not an adversary to be beaten, but a resource necessary

for successful project completion.

3. Synergy: Synergy is the concept that two elements working together can achieve more than the sum of the two elements working separately. This concept has great application in complex government contracts. For example, many contractors develop teams to bid on certain requirements realizing that only by combining expertise can they hope to achieve contract performance. The AMC Partnering Model envisions that successful performance involves not only the efforts of the contracting community performing to the terms of the contract, but the efforts of the government personnel as well. If government and contractor resources work together, rather than against each other, the end result is often far superior, with both sides meeting or exceeding their goals.

4. Team building and conflict resolution: As teams are formed, the parties go through a series of stages as the members learn to gain trust with each other. Without this trust, the team's performance is slowed as members question purposes, authorities, or check the intent and performance of other team members. The AMC Model Partnering process includes tools which help the team members overcome some of the initial mistrust the parties may have with each other by improving communication and avoiding conflicts. Teams operate most effectively when conflict within the team is properly managed. Studies have shown four basic elements of conflict within teams: a) personality differences, b) a misunderstanding of common goals and objectives, c) a misunderstanding as to roles and responsibilities, and d) lack of a conflict resolution methodology. The AMC Model Partnering process contains procedures designed to address, at the beginning of contract performance, each of these elements of conflict that may occur within the inter-organizational team.

5. Project management: Partnering provides the parties with tools designed to be used throughout performance of the contract to keep the parties focused on success, and to resolve problems before they affect the desired outcomes. Partnering does not assume that a project is, or will otherwise be, poorly managed. Rather it provides a road-map, a series of management tools, that address many of the less obvious influences on successful performance. Similar to the use of SPC to monitor the production process to ensure quality at the end of the line, partnering monitors the human influences of project performance to ensure that these resources are operating efficiently.

6. Acquisition reform: We have learned that the government spends between 15 to 40% more than private industry in obtaining its products and services due to the extensive oversight we place on government contracts. We also recognize that we can no longer afford to pay this premium. Without our traditional oversight, we also recognize that our risks of poor performance or fraudulent activity may increase. As part of acquisition reform we have turned to past performance evaluations to reduce the risk of poor contractor performance. However, once the contract is awarded, we must then turn to partnering to ensure early identification and resolution of problems. By improving communication between the parties, we can reduce the risks of failure by early identification and resolution of problems. By increasing our trust, we can

rely more heavily upon each other to do what is necessary, and measure whether the purposes of the contract are being met, without the expensive oversight that we can no longer afford.

III. Conclusion: As our resources continue to decline, we must find a way to maximize what we have, and eliminate nonproductive activity. As people are viewed as our most important resource, it is imperative that we use them as effectively as we can. As more and more of our requirements are obtained through contracting, we must change our view that contractors are our adversaries and view them as an asset to mission support. The AMC Model Partnering process allows us to adopt the attitude and gain the trust necessary to provide the maximum support to our soldiers.