

Partnering Contracts Compared

The four main Partnering Contracts currently in use have a number of features that differentiate them from one another. Below is a summary of each of the Contracts, highlighting their main features and benefits, along with a comparison in terms of their respective strengths and weaknesses.

Features of Partnering Contracts

PPC2000

The PPC2000 partnering contract broke new ground when it was first produced in that, unlike most other standard forms of contract which provide for only two parties, it is multiparty.

The Client and Constructor are naturally parties to the contract but there is also provision for the Client's Consultants and Specialist Subcontractors to be parties to the contract. This avoids the need for separate appointments for the consultants and subcontracts for the specialists.

There is a great deal of flexibility with regard to the procurement route, which can incorporate lump sum or cost reimbursable payment arrangements, employer design or contractor design.

A popular feature of the contract is the Pre-possession Agreement. This allows the Constructor to undertake activities after the contract has been entered into, but before possession of the site has been granted.

A core team is appointed under PPC2000, with members of a number of the project team represented. The core team is responsible for making key decisions together, with the intention of overcoming the traditional adversarial relationships and instead realising the benefits of a partnering approach.

Other features of the contract are the introduction of a Partnering Adviser to facilitate the project team's adoption of a partnered approach, the use of KPI's and continuous improvement, and value engineering.

The contract does however retain some of the features of the more traditional forms of contract, in particular the 'extension of time' clause which will make for familiar reading.

NEC Partnering Option (x12)

The Partnering Option (x12) is one of the secondary options which can be used along with any of the Primary Options in the NEC3 suite of contracts. It is fairly brief and largely comprises a schedule of partners and a provision for adding names as a project progresses.

In like manner to PPC2000, the employer and contractor are signatories to the Partnering Option together with the employer's consultants and some of the key specialist subcontractors. Unlike PPC2000 however, which is multi-party, the NEC

Partnering Option is an add-on to the basic Primary Options which provide for two parties only.

There is provision in the Partnering Option for a Core Group to be named. However whilst the Core Group has the power to organise meetings, instructions are given in the traditional manner using the Primary Option contract.

The Partnering Option deals with the partnering relationships which is its main function. Any rights however would have to be enforced using the Primary Option contract and not by reference to the Partnering Option.

Public Sector Partnering Contract (PSPC)

The PSPC contract in like manner to the NEC contract provides for a number of procurement options which are designed for two parties. A Partnering Agreement is also provided which is signed by the partnering team and incorporates the collaborative working arrangements.

The options allow for an array of different procurement routes including lump sum authority design or contractor design, cost reimbursable with employer's design or contractor's design and term maintenance. There is also a professional services option and a subcontract.

A Pre-start Agreement is also included, which has a similar use to the PPC2000 Pre Possession Agreement in that it allows the Constructor to undertake activities before possession of a site has been granted.

The wording of the contract is easy to read and understand and includes only what is required.

As the success of a project will depend upon the quality of personnel it is a requirement of the contract that the names of the personnel are provided in the contract annex.

The rights of the parties in like manner to the NEC contract will be enforceable under the Option contract chosen and not the Partnering Agreement.

JCT 05 Constructing Excellence

In like manner to PPC2000, the JCT 05 Constructing Excellence contract has been drafted to adhere to collaborative working principles.

There is also a similarity with PSPC and the NEC Partnering option in that the principle conditions are incorporated into a two party agreement with all the partners joined as parties to a separate Project Team Agreement.

Unlike the other partnering contracts described above this contract includes for the production of a Risk Allocation Schedule. The parties complete this schedule before signing the contract and it becomes the foundation upon which the extension of time allowance is built.

There are other similarities with the PPC 2000 contract in that it has a great deal of flexibility as to the procurement system which is to be used. The names of the Key Personnel are to be inserted into the contract and there is provision for the use of KPI's.

Strengths and Weaknesses

PPC2000

This contract was the first partnering contract to be produced and therefore had a head start. The contract seems to have been designed for organisations new to partnering as the collaborative working arrangements make up a substantial part of the contract conditions. This may be ideal for organisations new to collaborative working, but for those who already have processes in place using PPC2000 will involve changing their procedures to suit the contract requirements.

The contract is totally flexible with regard to the procurement route, whether it be employer design or design and construct. Whilst this has advantages, a substantial amount of time is likely to be expended in producing the Partnering Documents such as the Price Framework, the Consultants Services Schedules and the Consultant Payment Terms, which are standard in the NEC and PSPC contracts.

Some organisations that have used the contract comment on the amount of time and cost which is expended before work commences. A view has been expressed that as the contract is multiparty, legal costs will be extensive should a serious dispute ever arise.

It is perhaps a more suitable form of contract for those who believe in signing the contract, putting it in a drawer never to be referred to again, it is the most suitable of the four.

NEC Partnering Option (x12)

The NEC contract has been in use since the early 1990s and therefore has a track record. Those who use it have mixed views.

In employing a system of fully drafted primary and secondary options it has great flexibility which is a substantial strength.

The intention from the outset was to improve efficiency and working practices, and the publication of the Partnering Option has enhanced the process. All who use this form are impressed by the collaborative working relationships which are engendered.

However there is general unease with the processes which are included in the compensation events clause. This clause is all embracing in that it deals with variations and changes together with extensions of time and additional costs.

The process is said to be laborious and requires substantial management involvement. This can result in the system being abandoned part way through the construction process in favour of more traditional methods.

The revised version, NEC edition 3, has also given rise to adverse criticism by introducing a written notice requirement from the contractor with regard to extensions of time, the service of the notice being a condition precedent to an entitlement to an extension of time. It is felt that this type of provision is not conducive to collaborative working.

Public Sector Partnering Contract (PSPC)

This contract has been designed for use in the public sector but is equally suitable for the private sector and in like fashion to the other three, fosters collaborative working. In a similar manner to the NEC form it provides for fully drafted procurement options and fully drafted subcontract conditions and professional services conditions.

In marked contrast to the NEC contract it has a more traditional approach to variations and extensions of time. The pre-start agreement avoids the use and problems associated with letters of intent.

The PSPC Partnering Contract has been produced with ease of use in mind. It is written in plain English using concise, clear sentences, rather than the traditional legal terms that some contract users can find difficult to understand, and is therefore far more user friendly than the other forms of contract that exist.

JCT 05 Constructing Excellence

The JCT 05 Constructing Excellence This form of contract has only recently been published and therefore, unlike the other three forms there has been no opportunity for feed back from users. In like manner to the NEC and PSPC contracts the partnering provisions have been set out in a separate agreement.

Including a risk allocation schedule gives the contract a modern flavour and ensures that this important matter is properly addressed as a condition of the contract. The downside is that the risk allocation schedule is linked to the extension of time provisions and therefore there may be a lack of consistency

One aspect of the contract, which is not provided for in the others, is a provision for an early completion bonus which should stimulate progress. In similar fashion to PPC2000 the flexible nature of the form requires substantial costs to be incurred before work commences. The contract seems light on contract conditions such as a proper variations clause and the appointment of anybody in authority to issue instructions.