

FORMALISATION OF PARTNERING AS A COLLABORATIVE PROCUREMENT
METHOD

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ABSTRACT

Over the past twenty years there has been a development towards contract arrangements in construction which are more relational in nature. In particular 'partnering' arrangements have evolved. The partnering agreements are clearly intended to intensify the relational nature of construction contracts. In which these agreements frequently contain express references to general relational concepts such as trust, collaboration, goodwill, co-operation, good faith etc. This concept has been heralded by a flood of supportive articles since its introduction. However, recently there were a rising number of critical and dubious comments, particularly within the legal profession. The main issue concerned was that, dispute might still occur although the partnering process had been claimed as a useful dispute-prevention process. Thus, when a dispute does occur, there will be questions whether partnering obligations are enforceable and whether a cause of action can be based on a breach of these obligations. Therefore, this project report had been conducted to examine the needs to formalise the partnering arrangements. There are a total number of six UK court cases have been analysed thoroughly in this research. Apart from that, questionnaire surveys have also been conducted in order to gain an overview of the current perspective among the professionals towards the needs of formalisation of the partnering arrangement. From the case analysis, it had been agreed that the partnering arrangement should be formalised. The reasons are: for better security of interest, to avoid dispute, to avoid the abuse of 'good faith' and 'partnering' concepts, to clearly define the partnered parties' duties, and to provide a more consistent partnering procedures. Interestingly, from the field survey, the findings showed that people tend to avoid formalising and legalising their partnering relationship with the belief that the legalising will pull down the spirit of partnering arrangement. The outcome of this research is hoped to become a useful reference for the participant and potential participant in a partnering arrangement.

ABSTRAK

Sejak dua puluh tahun kebelakangan ini, susunan kontrak dalam industri pembinaan telah diperkembangkan lebih ke arah berasaskan hubungan baik. Dengan itu, rantaian kerjasama (*partnering*) telah dimajukan. Perjanjian rantaian kerjasama bertujuan untuk memperkukuhkan lagi hubungan baik dalam kontrak pembinaan. Di mana, perjanjian tersebut biasanya meliputi rujukan tersurat mengenai konsep umum tentang hubungan baik seperti kepercayaan, kerjasama, kemesraan, koperasi, niat baik dan lain-lain. Konsep tersebut telah dibanjiri dengan pelbagai artikel yang menyokong sejak kemunculannya. Akan tetapi, sejak kebelakangan ini, suara kritikan tentang konsep rantaian kerjasama terutamanya dalam konteks undang-undang semakin bertambah. Adalah dikatakan bahawa pertikaian tetap berlaku walaupun konsep rantaian kerjasama telah dikenali sebagai proses pencegahan pertikaian yang berkesan. Apabila pertikaian berlaku, persoalan timbul sama ada kewajipan rantaian kerjasama boleh dikuatkuasakan dan tindakan dapat diambil berdasarkan kemungkiran kewajipan tersebut. Maka, penyelidikan ini dijalankan untuk mengenalpasti keperluan supaya rantaian kerjasama dibuat secara formal. Enam kes mahkamah akan dianalisis dalam penyelidikan ini. Sementara itu, kajian soal-selidik juga telah dijalankan bagi mendapatkan suatu gambaran tentang pandangan pakar terhadap isu samada konsep rantaian kerjasama perlu dibuat secara formal. Hasil penyelidikan kes-kes telah menyokong supaya konsep rantaian kerjasama dibuat secara formal. Antara sebab-sebabnya ialah untuk memastikan kepentingan dijamin, mengelakkan pertikaian, mengelakkan penyalahgunaan konsep 'niat baik' dan 'rantaian kerjasama', untuk menakrifkan tanggungjawab rakan rantaian kerjasama dengan jelas dan menyediakan suatu prosedur rantaian kerjasama yang lebih konsisten. Hakikatnya, ramai yang beranggapan bahawa menjadikan rantaian kerjasama formal akan meruntuhkan semangat rantaian kerjasama. tersebut Hasil penyelidikan ini diharapkan supaya boleh dijadikan sebagai rujukan yang berguna kepada warga industri yang bakal terlibat dalam susunan rantaian kerjasama.