PPC2000: Association Of Consultant Architects Standard Form Of Project Partnering Contract

Katie Saunders and David Mosey[1]

Introduction

PPC2000 (Mosey 2005) is a published form of multi-party contract for procurement of capital projects in any jurisdiction. It is based on heads of terms devised by the cross industry Construction Industry Council Partnering Taskforce and was drafted by the UK and International law firm Trowers & Hamlins. PPC2000 was launched by Sir John Egan in September 2000 and has since been adopted on over £8 billion of construction and engineering projects. The key differences between PPC2000 and other published contract forms are that:-

- it integrates the entire Project Team under a single multi-party contract;
- it covers the entire duration of the procurement process.

Integrated Team

A multi-party contract puts the Constructor, the Consultants and key Specialist Sub-contractors on the same terms and conditions, so that they are fully aware of each other's roles and responsibilities and owe each other a direct duty of care. This avoids the risk of inconsistencies, gaps or duplications otherwise present in a series of two party contracts and thereby establishes a much stronger contractual base for all activities. It also avoids the Client having to act as the conduit for communication and resolution of problems between other team members.

Integrated Process

To obtain better value from projects it is essential to harness the maximum input to design development and risk management from the main contractor (the "Constructor") and its Specialist Sub-contractors at the earliest opportunity. PPC2000 creates the contractual structure to achieve this by providing for the Constructor, Consultants and Specialist Sub-contractors to be appointed as early as possible in the design development process and to work in accordance with a single integrated timetable to achieve all necessary pre-conditions through to commencement of the Project on Site.

As a project management tool PPC2000 therefore creates a clear structure and set of processes to govern the pre-construction phase of the Project. This is the time when value can be added by the Constructor and Specialist Sub-contractors in terms of:-

- Contributions to design development;
- Value engineering of existing designs;
- Value management by the assessment of alternative solutions; and
- Analysis/management of Project risks with a view to reducing or eliminating their costs.

[1] Trowers & Hamlins, Sceptre Court, 40 Tower Hill, London EC3N 4DX, England, e-mail: dmosey@trowers.com and ksaunders@trowers.com.

Build up of Designs/Supply Chain/Prices

The early creation of a team, if it is to include the Constructor, requires agreement of a Project Budget and the Constructor's level of profit and overheads. It therefore envisages the selection of a Constructor on the basis of a mix of financial and qualitative criteria rather than simply a lump sum price. PPC2000 provides for flexible processes to reflect the Client's needs, based on the following logical sequence of activities:-

- design development with Constructor input and provisional Specialist Sub-contractor input;
- analysis of Constructor business cases for any single source selection (through direct labour or preferred Specialist Sub-contractors) and the open-book tendering of other sub-contract packages;
- approval of each works package and agreement of whether Specialist Sub-contractors will join the overall Project Partnering Team, in either case with the approval of robust fixed prices;
- analysis and management of risks to reduce or eliminate price contingencies;
- incentivisation of cost savings and added value proposals that derive from the value engineering of designs (where prices have previously been approved) or the reduction of risks (where risk contingencies have previously been approved);
- the finalisation of an Agreed Maximum Price supported by a full Price Framework, with a complete supply chain and after satisfaction of all other pre-conditions to commencement of the Project on site.

Project on Site

The new processes under PPC2000 continue not only during the pre-construction phase but also during the construction phase. They include the following:-

- an Early Warning system as regards any problems in performance;
- advance evaluation of any proposed change or the event of delay or disruption and a restriction on the Constructor's right to obtain additional profit or central office overhead as a result of delay or disruption (effectively the earlier involvement of the Constructor in an ordered process through to start on site is a trade-off for excluding their right to benefit from later claims if there are problems on site);
- operation of a Core Group of key individuals representing team members, who are the medium for adding value through a partnered collaborative approach – if they can reach agreement (if they can't, the Project proceeds on the basis of the agreed documentation);
- a contractually binding Project Timetable governing the interface between team members during the construction phase, thus following on from the Partnering Timetable that governs those activities during the pre-construction phase;
- agreed incentives including financial links between achievement or non-achievement of agreed Key Performance Indicator targets;
- a structured approach to alternative dispute resolution including a Problem-Solving Hierarchy and reference to the Core Group, conciliation or mediation;
- the use as appropriate of a Partnering Adviser to support the entire team (rather than an individual member of it), documenting their relationships and advising on the new relationships and processes in practice.

Contrast with alternative approaches to procurement

A number of the innovations in PPC2000 also present to some degree in the New Engineering Contract "NEC" (Telford 2005) suite of contracts (e.g. early warning and advance evaluation of changes/delay/disruption). PPC2000 has the benefit of taking these much further and achieving a level of integration not present in NEC or any other form of contract. PPC2000 is designed to overcome the following risks that arise under many traditional contracts:-

- protracted design development in the hands of Consultants without Constructor/Specialist input as to innovation/buildability/affordability;
- inadequate information issued to Constructors at tender stage so that they add excessive price for risk;
- inadequate time for tendering so that Sub-contractor prices are estimated only (with further risk contingencies added) and so that Sub-contractors do not provide added value – because they are tendering to someone who has themselves not yet won the Project;
- hidden information as to the relationship between the Constructor and its Specialist Sub-contractors (by way of discounts etc.), "Dutch auctions" to obtain cheaper Sub-contractors later and enhance Constructor profit, and lack of open-book pricing information – particularly relevant if there are changes or costs arising from delay/disruption;
- inability of team members to declare problems early and propose solutions, for fear of inviting claims;
- absence of advance information in relation to changes or delay/disruption, to enable the Client and other team members to mitigate their effect;
- absence of binding timetables, with the result of misunderstandings and consequent delays;
- absence of alternative ways of resolving disputes, thus encouraging the risk of adjudication/litigation/arbitration.

PPC2000 in practice

In its early days PPC2000 was adopted primarily by the public sector on housing programmes. It has since spread very quickly to other sectors and types of work. Relevant projects/programmes range in value from £½ million to £800 million and include:-

a) De Vere Hotels who used PPC2000 for a major capital project in Scotland;

b) BAE Systems, who adopted PPC2000 as the basis for a capital programme covering all construction and engineering projects including offices, production and manufacturing facilities, runways etc, and who have obtained good time/cost/quality results on early projects;

c) Virgin Trains who adopted PPC2000 on a capital programme for station upgrades and retail facilities, and who were particularly impressed by the contract's programming provisions;

d) Durham County Council who are using PPC2000 on a £575 million programme over 7 years to cover all highways and bridge projects and all schools and other public buildings projects, recognised as a "Pathfinder" project by the Office of the Deputy Prime Minister;

e) Surrey County Council who have adopted PPC2000 as the basis for a 10 year strategic programme for all highways and bridge projects with an aggregate

value totalling £340 million, a project which won 3rd place in the 2003 Lawyer Awards for "Public Sector Team of the Year".

f) Manchester Airport who achieved major cost savings through using a "construction management" adaptation of PPC2000 on two terminal projects;

g) HM Prison Service who have adopted PPC2000 for their £2-3 billion strategic programme.

h) Department of Work & Pensions and Land Securities Trillium who use PPC2000 for a £500 million "roll-out" programme for Job Centre Plus projects across the UK, winning the OGC Government Procurement Award and the "Building" Health and OGC Safety Award in 2003.

Many of the projects adopting PPC2000 involved private funders, including for example the first major programme which comprised £240 million of housing upgrade in Coventry. In addition PPC2000 has been accepted by professional indemnity insurers and by a wide variety of consultants and constructors and specialist-sub-contractors.

Trowers & Hamlins' Role as Partnering Adviser

Trowers & Hamlins drafted PPC2000, the related Specialist Sub-Contract SPC2000 and the official published Guide to both forms of contract (Mosey 2005).

Trowers & Hamlins have drafted bespoke adaptations of PPC2000 and SPC2000 to deal with:-

- Creation and operation of development teams;
- Provision of operating and maintenance services;
- Strategic alliancing and framework arrangements;
- Construction management partnering;
- Minor works partnering.

Partners and solicitors from Trowers & Hamlins fulfil the role of "Partnering Adviser", supporting teams who utilise PPC2000 and providing training and guidance as required. Full details of these services are available on request.

International

PPC2000 has attracted considerable interest world-wide and is under detailed consideration in countries which include Australia, Singapore and Japan. It has already been used successfully on bank refurbishment projects in West Africa and has been adopted for a major Embassy Project in the Middle East.

PPC2000 is specifically designed to be used in any jurisdiction and with any legal system, subject to a minimum of adaptation.

Availability and User Group

The following documents are available in published form from the Association of Consultant Architects (www.ACArchitects.co.uk.) or from Trowers & Hamlins:-

- PPC2000;
- SPC2000 Form of Specialist Sub-Contract for use with PPC2000;
- Guide to PPC2000 and SPC2000.

There has recently been formed a PPC2000 User Group for development of best practice and exchange of information between clients, constructors and consultants on PPC2000 projects across the UK. Further details are available from the Association of Consultant Architects and Trowers & Hamlins.

There also exists an Association of Partnering Advisers to ensure accreditation of individuals who are suitable and experienced to support the implementation of PPC2000 in practice. Numerous partners and solicitors in Trowers & Hamlins are members of the Association of Partnering Advisers (www.partneringadvisers.co.uk), and further details can be provided upon request.

Conclusions

PPC2000 is a medium to achieve greater integration and better results in the procurement of any capital Project in any jurisdiction. It requires, and rewards, closer client involvement in the Project and creates a new set of relationships and processes leading to:-

- removal of gaps/duplications between team members and avoidance of confusion and wasted time/money resolving these at a later stage;
- clear timetables through to start on site and resultant savings in cost;
- earlier Constructor and Specialist input leading to innovations and efficiencies with the potential to improve quality/reduce cost;
- more open cost information to establish price accuracy, removal/reduction of arbitrary price contingencies, and closer control over the consequences of changes and unforeseen events;
- improved performance of Constructor/Consultants/Specialists through early creation of a team supported by improved communication and mutually compatible roles and responsibilities.

References:

1. Mosey, D. (2003). *PPC2000 - ACA Form of Contract for Project Partnering Amended 2003*. The Association of Consultant Architects Limited (ACA)].
2. Telford (2005). *New Engineering Contract.* Thomas Telford Services Limited, - Institution of Civil Engineers (www.ice.org.uk) edition.
3. Mosey, D. (2005). Guide to the ACA Project Partnering Contracts PPC2000 and SPC2000. The Association of Consultant Architects.