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Unforeseen Consequences of the 'Partnering' Movement

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Last year I was asked to write a commentary on a 'Partnering' article which appeared in the June 1996 issue of the Journal of Architecture Engineering. The name is so appealing and the article was so upbeat that I really wanted to give the concept my full approval. Yet, there was something about it all that nagged at me and made me suspicious. I sensed it was too good to be true and might even cause harm but didn't know quite why. I ended up writing an article expressing concerns that those with the most power would tend to 'partner' their risks downward but not their rewards. I saw 'partnering' language being used to cover bad behavior formerly restrained by long established role divisions.

Not wanting to be a skunk at the garden party (my commentary is now in print) without accomplishing anything, I've listed these further observations.

1. I've noticed a trend among construction managers to eschew the old way of contracting with the subs themselves in favor of having the subs contract directly with the owner. They are all under direct contract with the Owner, kinda like partners would be. When I asked one C.M. why, he said he doesn't want the liability exposure of contracting with them himself.
2. At the ACEC Conference in Rapid City, SD, last fall a speaker from a Washington, DC, think tank described a "devolution" movement or a tendency for power, responsibility, risk, etc. to be pushed down the line. He predicted this would become more pronounced.

It is easy, under the cover of 'partnering', to make decisions favorable to one's self while shifting the risks for

these decisions down to the subs or other expendable parties. If you get real good at it they won't even know it until it is too late. It is too easy to arrange to have it both ways, if you are in a stronger position with the Owner than are the others. The C.M. described above will be directing the most important decisions. Even though they are equal contractually, they do not all have the same votes. His is bigger. By routing the contracts around himself to the owner, he has effectively isolated the subcontractor(s). An isolated subcontractor is easier to blame if something goes wrong. He's more expendable.

This situation puts you, the consulting engineer and designer of the systems installed by that subcontractor, into direct conflict with the C.M. It was easier when the G.C. and his subs came packaged together contractually. The G.C. was held accountable for the outcome produced by the subs. In a sense you the engineer are also held accountable for the outcome produced by the subs. In the event of an undesirable outcome, you the engineer are better off dealing with the G.C. because he probably played a big part in it and in any event will have to make it better because he's responsible contractually. With no contractual responsibility by the C.M. (G.C. in disguise) you are left to deal with the poor sub who has inherited 100% of the risk for which he deserves only a part.

This means more work for the engineer who now has to keep an eye on the C.M./G.C. to make sure he doesn't force any bad decisions onto the subs. The G.C.'s duties still include approving payment requests to the subs. It is now up to the engineer to be the watch dog, policing people and situations which up to now have been more or less self policing.

I blame unexamined "partnering" thinking for this state of affairs. The hierarchical system may seem "unfair" outwardly, but it at least kept the risks closer to the party most able to control them. The G.C. would think twice

before forcing decisions on the subs for which contractually he, himself, would have to pay.

If this “partnering” (risk devolution in disguise) trend continues, consulting engineers should prepare to spend more time on things they never expected to do. It does make a difference if the construction manager’s contract with the owner is an A121/CMc rather than a A131/Cmc. You may want to get this information before writing your own contract for design services (don’t expect the architect to get it for you) or even before deciding whether to pursue this project.