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PPI: Partnering: DRBs
- are they compatible?

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PPI: Partnering: DRBs - are they compatible?

1. Introduction

The Government's determination to use Private/Public monies to produce - more quickly - the hospitals, schools, etc., needed to preserve their "public services" provision commitment, would seem to comfortably fit with the growing buildings procurement method of "Partnering". However, in all the many articles within the development problems of the Partnering concept, one aspect of this procurement system seems to have escaped the serous attention of the various authors - the method of settling disputes within this "new" concept - or gets only cursory treatment.

However friendly the "Partnering" philosophy might be - obviously contractual disputes must arise, and in such circumstances would one rely on the well-tried adversarial methods of Arbitration (failed!) and Adjudication (failing?) - recognising that adversarial behaviour of itself defies the very basic concept of "Partnering" (see Cl. 24 page 4 of JCT Practices Note 4 - "Partnering") -

> *"Partnering .... is essentially a no blame approach ... it means acceptance of one's own faults").*

So, therefore how does one deal with a "contractual dispute" within the philosophy of the "no-blame approach" of Partnering? - I would suggest the non-adversarial dispute-solving philosophy of the "Dispute Review Board" (DRB) - a matching philosophy. The difficulty here is that whereas the concept of "Partnering" is still somewhat new to many Clients and Contractors - the concept of DRBs is known to even less numbers within the Construction Industry in the U.K. So before we can even consider the philosophy of Dispute Review Board activities - as to perhaps their matching characteristics with the philosophy of "Partnering" - we need first to know what a DRB is, and how it works.

2. Dispute Review Boards - Their History - Their Relevance - Their Future

Introduction

For those who may be uncertain, may I, at the outset, describe briefly what a DRB is. In its simplistic terms, a DRB is a "job-site" dispute resolution panel. It normally consists of 3

persons - one nominated by the client, one by the contractor and the Chairman by nomination of the first two - somewhat similar to the construction of an I.C.C. arbitration tribunal. The DRB is normally appointed at the start of a project and undertakes regular visits to site during construction - thus becoming part of the project. The idea is that the DRB is called upon to resolve any serious disputes between the parties - quickly - and whilst their "Decision" must be acted upon immediately - usually either Party may take the matter to arbitration or litigation upon completion of the project, if the contract so requires.

The History of DRBs

The concept of Dispute Resolution Boards originated in the USA where it has been in use for some 20+ years; indeed the earliest reported use was on the "Boundary Dam" project in Washington in the 1960s. Thus the DRB concept had arrived to meet the need in the Construction Industry for prompt, cost-effective and impartial resolution. The idea is certainly growing - the recorded data of the "The Dispute Review Board Foundation Inc.", the American body fostering DRBs- shows that more projects have used DRBs in the last 5 years or so than in the previous 15 years. I quote the Foundation:-

> *"This site-based process, out of which come prompt recommendations by an expert neutral DRB panel ... has enormous potential to settle disputes as they arise .... there is no better process that can keep the parties to the construction project working in harmony and prevent the INEVITABLE DISPUTES* [the capitals are mine] *from escalating into the animosity and hardened positions which all too often lead to litigation - at great cost in time and money".*

In 1980 a DRB was used in Honduras in an international project; by 1994, 67 DRB projects had been completed and 93 DRB projects were in process with 193 in the planning stage. It is of particular note that many hundreds of disputes have been the subject of DRB "Decisions" but that there have been very VERY few (single figures!) occasions when DRB "Decisions" have been referred to Arbitration or Litigation. Indeed the DRB Foundation says - and I quote:-

"To date (that is mid-1998) 570 disputes have been settled in over 400 contracts using DRBs .... and to date, no disputes on which DRB recommendations were made have been litigated."

I have since heard 2 are in the process of going to arbitration. (These statistics are a little out-of-date but it is the percentages which are notable).

DRBs are known to be operating in the USA, UK (a few!) France, Sweden, South Africa, Uganda, China, India and Hong Kong.

How do DRBs work?

The Client usually initiates in the contract the DRB requirement - but not always. In the case of Hong Kong Airport for example - as I understand it, it was a JOINT agreement between the Client and the local Contractors' Association and they jointly agreed on an 8-person panel; this is a most unusual size of Board - but clearly there were special political circumstances - there were 4 "technical" members (2 Civil/Structural, 1 Quantity Surveyor and 1 Building Services Engineer) and a Contractor - all with arbitration experience - together with 2 Chinese Law Professors and a retired judge. However, I am advised that the "Contractor" resigned quite soon after appointment, therefore the "operational" Board consisted of 7 persons. (A quite exceptional number!).

If the individuals are not named in the contract - but obviously the DRB procedure is defined therein - the Board members are normally appointed immediately the contract is placed. The Client on the one hand nominates an individual to the Contractor(s) and vice-versa, and if either side object to that person, the other would normally nominate another until both Parties agree - the 2 nominated members appoint a third member - with the agreement of the 2 Parties - and this third member is usually the "Chairman/Convenor" of the tribunal. At this point the now 3 members draw-up a "Three Party Agreement" which formalises the Board's authority, attendance on site, duties, fees/expenses - and notes that individual members of the Board - notwithstanding WHO nominated them - must act with total impartiality. The DRB would then call a meeting on site and agree their attendance frequency and any organisational/administration details. Sometimes there is no need for a "Preliminary Meeting" - we might call it - since a 3-Party Agreement may have already been drawn-up and accepted by

the members of the Board, giving all the details of attendances on site, duties, fees, procedures for various events which might occur.

It must be appreciated that REGULAR VISITS to site - usually during normal site meetings - is a fundamental requirement of a DRB procedures. The DRB members will sit-in at such meetings and take part in any site-visit-walkabouts - albeit as "observers only" - they must be careful not to take part in any on-site debates regarding design or constructional/installation methods or quality - such behaviour would obviously compromise their neutrality should a dispute arise on that particular subject.

It will be appreciated that early appointment and regular site visits enable the DRB members to become knowledgeable about the project, its progress and observe problems as they develop together with the growing technical difficulties so that this close knowledge of the project (and of the personalities involved!), permit quick, informed, even-handed and consistent responses from the DRB. Such contemporaneous observation and prompt action is obviously better than trying to visualise factual circumstances perhaps of years earlier and reading documents or listening to the view of witnesses-of-fact as is the case with the Arbitration process.

Sometimes the DRB submits a note of their visit - that is, general comment only with fee/expenses invoices - to the Parties, but this procedure varies from appointment-to-appointment as to WHO sends you the cheque - the principle nevertheless is that each of the 2 Parties pay 50% of these "site-visit" costs and indeed the individual DR Board member must turn-up on site to be paid!

It is normal in a DRB procedure for the Parties to first endeavour to agree Claims (with a capital "C"!) within the terms of the contract BEFORE the dispute is submitted to the DRB (no "at any time" here as in our Adjudication Act!), but once the Parties are in disagreement, either Party can require the other to go to the DRB and the other Party must comply. The DRB will deal with the matter promptly - indeed some have been reported as having been dealt with on the day of the site-meeting visit! - otherwise as soon as possible, even large disputes are resolved within a matter of a few weeks. In very large contracts the "dispute settlement period" is often a maximum of 90 days - but the usual period is 14-28 days.

There is, of course, no DRB Act - far less a "Scheme" document setting out specific procedures

- therefore I am endeavouring to give you the general trend of how DRBs operate. However, to illustrate the flexibility - which naturally must be written into the contract and the DRBs appointment (the 3-Party Agreement) - let me give you an outline of a major contract procedure.

Firstly - in general terms only - what does the Contract between the Parties say? Claims will first be dealt with in the normal contractual manner, but if there is failure to agree, the matter will first go to, say, the Project Manager and if it continues to be unresolved, the matter could go to, say, a Project Director (the highest "technical" officer) but if there is still failure to agree, the dispute will only then go to the DRB. All this must happen within, say, 30 days to the Project Manager and, perhaps, 60 days to the Project Director - thus if the Project Manager or Director does not give a decision within the timescales, the Dispute will automatically go to the DRB and one I have read makes this notable comment:-

> *"... acting as independent experts but not as arbitrators .... "*

It will be appreciated that none of the above procedures will be put in hand after the issue of a Completion Certificate.

The DRB has up to normally a maximum of 90 days to reach a "Decision" (or if this fails the matter will go to arbitration). The decisions of such Project Managers or Directors shall not preclude them from appearing before the DRB - and again - I quote:-

> *"The Court shall have power to enforce any decision of the DRPanel".*

Now let us look at "The Dispute Review Procedure" required of the DRB. In short, the Panel of 1 or 3 (see later) members agreed by the 2 Parties from the submitted names in the Contract - may be initiated by either Party; the "Claimant" initiates proceedings with a "concise summary" and "statement of relief claimed" together with copies of - or - "a statement list in the Respondents' possession". The Respondent will reply within 7 days - the "Response" - confirming Claimant's List or suggesting amendments with:

> *"A statement of such objections".*

The 3 appointed members of the DRB agree one of them to act as Chairman or the Convenor will decide if there is disagreement. The "90 day" period operates from the appointment of the Chairman of the Panel.

Perhaps we should pause and reflect upon the more unusual considerations of the DRB - a point which may sound like hearsay to our legal friends is to comment that there are indeed occasions where a dispute defies absolute interpretation under the contract, thus DRBs must give decisions which - whilst not dismissing contractual principles - are nevertheless firm enough to give clear and sensible guidance (the key word is "sensible"!) acceptable to the Parties. Effort must always be made to encourage the Parties with advice which will lead to the resolution of the dispute as soon as is practical, thus permitting the project to proceed unhindered by "contractual baggage". Again the routine site visits (remember, don't give design or installation advice - you are not a consultant!) provide a focus so that regular Claims and potential Claims are not permitted to lie and fester only to re-emerge later in an acrimonious atmosphere - indeed the then Master of the Rolls - Lord Wolff had helpfully described this as "lancing the boil".

Are DRBs relevant to modern construction contracts? - in my view, indeed they are and their relevance is growing. The Latham Report "Constructing the Team" heralded the need for something to be done about the ailing arbitration procedure which everyone agrees has lost its way in achieving its historical intent - to provide a confidential, quick, cheap solution to a dispute which the Courts couldn't do, and so the fledgling Adjudication Act was born - albeit sickly and somewhat unsteady in its infancy (and still "ailing" - may I say!). The interesting point is that the somewhat more robust DRB procedure is akin - to the modern approach of the contract procurement process of "Partnering", you have now a perfect match - Partnering and DRB - both non-adversarial in their basic concept. Let me note an extract from a letter I received from a Contract Manager of a large - very large - international company:-

> *"...[we] have moved away from adversarial contracting methods, forms and pricing styles; we now widely operate "Alliance-Contracts" and "Open Book Target Costs and Gainsharing pricing" in positive managed relationship with selected core contractors. These*

> *are proving mutually successful; they include "Dispute Resolution*

Clauses" rather than Arbitration which appears to have been taken-over by the legal profession. In the last 10 years we have had only one dispute proceed as far as arbitration."

You should appreciate that I had been in contact with this company on quite another matter and didn't even appreciate that they even knew what a DRB was! - thus the above is unsolicited comment! - if you like! Then there is the "long shadow" effect - the very existence of a readily available, mutually acceptable dispute resolution process seems to encourage settlement of disputes rather than the recourse to arbitration or litigation AND acrimony - there is copious evidence of this - for whatever reasons. There are numerous examples to show that a DRB facilitates positive relations, open communications and the trust associated with "Partnering". Indeed let me tell you of my personal experience of this behaviour, I found myself in conversation with a Main Building Contractor's new Project Manager who was not convinced at all about this new "DRB lark"! - "Why is this needed" he said, "the normal professional discussions on site as per contract were quite satisfactory, etc. etc." However, some years later, we had the same subject of conversation and he had turned around 180 degrees - he said things like "We had great confidence in discussing Claims with this powerful Client with the comforting knowledge that the very reliable professional DR Group - sitting at the regular meetings and taking part in site walkabouts would see fair play, etc. etc." Thus, it would seem that a regularly-visiting DRB simply BEING THERE has some ethereal effect to promote settlement of claims even before it becomes a dispute!

However, should there require to be DRB "intervention" - as it were - I will briefly describe the procedures I have examined - others will vary, but I don't get the impression that there is much difference in the procedures anywhere. Let me quote certain salient points I have noted:-

"..... the Panel shall have the widest discretion permitted by law".

"The panel shall have power to adopt - wholly or partially - an inquisitorial procedure .... and shall have the power to REFUSE a Party's request to conduct a cross-examination of any witness".

"... all meetings, inspections or hearings shall be in private and may be attended only by officers and employees of the Parties" (and coupled with this clause is) - *"... neither Party may be represented by*

lawyers - whether officers of the company, employees or consultants."

At this point may I say that at a DRB Foundation Conference I attended, there were pretty strong views on both sides of the "Lawyers" question and, it seems that an uneasy compromise has been reached that (in the USA you appreciate) - lawyers may be present BUT MUST NOT TAKE PART IN THE PROCEEDINGS IN ANY WAY OTHER THAN AS AN OBSERVERS!! (I am bound to say this is not necessarily my personal view!).

I will not tiresomely relate all the Panel's powers in the contract from which I have quoted - but the more noteworthy are - "proceed "ex-parte" if necessary//order "Discovery"//order preservation of samples and documents in case of a subsequent arbitration//commission expert opinion - including "law" for themselves//give "Decision" with reasons within 90 days or with 30 days extension if agree//"Decision" to be issued in draft and if no comment within 7 days, issue "Final Decision" in 14 days of draft//Majority "Decision" of Panel is acceptable//Panel may issue separate "Decision" on separate disputes at different times. So you will see that the DRB has very considerable powers - all intended toward prompt - but fair- solutions.

Costs of the Reference

Each party will deposit a sum of money for the Panel's Fees and Expenses only with the administrator upon "Commencement of Dispute" (3-times the sum if a 3-man Panel, of course) and further payments thereafter if the Chairman requires - the hourly rate for the Panel Members having already been quoted in the DRB Appointment document. The Panel will decide in the "Decision" what proportion of the "deposits" to be paid by the Parties - but the Parties pay their own "preparation costs", unless one Party acts in a frivolous or vexatious manner. If settled or abandoned, the Panel's fees will be paid on a 50/50 basis by the Parties.

Values vary from various analyses both in the USA and Australia - 0.1 to 0.3% of project costs are quoted, clearly the bigger the contract the easier to justify, but one should note that a "one-man Panel" for smaller projects is recommended by both FIDIC and the World Bank. It will be appreciated that FIDIC (The International Federation of Consulting Engineers) have now issued

up-dated Conditions of Contract (1999) which encompasses DABs (their title is "Dispute Adjudication Board") - Clause 20.

Costs for DRBS are often spoken of as "Insurance Premiums" - that is, prevention costs against

longsome Claims. Certainly a DRB saves massive costs for Trial preparation.

General

Panel members will not normally be appointed as arbitrator at any subsequent proceedings, but all submissions and decisions of the Panel will be available in such proceedings, indeed a signed "Decision" of the Panel may be submitted in evidence WITHOUT FURTHER PROOF! - but no member of a DRB Panel may be called as a witness.

The Hearing

The Hearing should be carried out without great formality - "just like a site-meeting" - it has been said. Audio and visual recording devices should NOT be used since this inhibits free discussion. Legal rules of evidence and cross-examination are NOT instigated. Usually one Party (their previously nominated speaker) will highlight only his "case" referring only - not exhaustively reading - his back-up documentation which both Parties and the DRB Members have had copies of. "Surprise" new evidence is very much not encouraged - specially if the DRB has any suspicion that this is an "ambushing" play by one Party upon the other. The Panel Members will do the cross-questioning "for clarification or amplification" purposes - and, of course the other party's spokesperson will do his/her presentation and may be cross-questioned by the DRB Panel. Usually both spokespersons are permitted to have a "rebuttal-reply" at this stage, however any "attack/defence" routines should be firmly stopped by the Chairman since such confrontational procedural skirmishes can often obscure the real issues of the dispute.

Both Parties are of course present throughout all Hearings - the Panel shall not receive confidential information from one Party - adjudication differs in this important respect from mediation and reconciliation. Members of the Panel and the Parties may, of course, make their own notes, but normally no formal note-taking or transcript is made of the proceedings. The Hearing will only end when both Parties feel they have nothing more to contribute (albeit with the DRB Panel in strict control of "waffle"). It will be appreciated that when a "Decision" is

non-binding - acceptance of this depends on the Parties' confidence in the whole process - and whilst the process is more "inquisitorial" than "adversarial", the confidence in the DRB members should be seen as more akin to "Expert determination". If a dispute concerns principle and quantum, these matters should be heard separately - indeed often the quantum has not yet been determined since one or other party thinks there is no merit in the case. Indeed, it is often

quicker - and cheaper - to give the “Decision” on principle only and let the Parties subsequently calculate the quantum - however, quantification should be carefully explained in narrative form - not merely by arithmetic calculation. Naturally, the Parties under these circumstances should be advised that the DRB will indeed quantify if the Parties again disagree on this.

It is preferable that DRB “Decisions” are unanimous - a majority decision is possible, but it is both unusual and unsatisfactory and would weaken the confidence in the DRB process. DRBs may be asked to give an “advisory opinion” - that is - a decision on a preliminary point for guidance of the parties on an arguable contractual interpretation.

A DRB “Decision” cannot be directly enforced as an arbitral “Award” - but an agreement which provided for a DRB may state categorically that the decision of the DRB is to be treated as an “expert determination” and is final and binding. It will be noted that a Court will normally enforce DRB “Decision” pending arbitration - unless the arbitration Hearing is imminent. However, there is often express provision in the contract that the DRB “Decision” will be binding in the interim - even if a reference to arbitration has been served - this is a vitally important matter which must be addressed when the DRB Agreement is being drafted.

Having said all the above, DRBs generally succeed without recourse to law; it will be interesting to note in the UK under the HGCR Act, if the Courts, when becoming involved in Adjudication will take the “expert determination” line of reasoning. I doubt it - indeed are there not strong indications that the Adjudication procedure is already on the “arbitration” slippery slope?.

The Future

Do DRBs have a future? - well the World Bank and FIDIC seem to think so - to such an extent that the 1999 issue of the FIDIC Contracts contains a section on DRBs/DABs, and certainly DRBs practical operative success rate is very impressive - 570 disputes over 400 contracts with

no “Decisions” - as yet! - litigated. (The statistics are a little dated, but the enormous “success” rate is very impressive.) This surely suggests a secure future once DRBs are generally accepted and “up-and-running” - as it were - in the UK. Then there is this very interesting “Long Shadow” effect of the presence of the DRB; it is evident that the Parties themselves make efforts to resolve disputes - thus the DRB seems to be an effective dispute avoidance device (I

have heard one experienced American DRB Foundation member refer to the DRB as "The insurance policy against acrimonious-longsome-tiresome disputes". The DRB certainly seems to foster co-operation between the Parties and certainly matches the philosophy of contract procurement by the "Partnering" concept, thus, if you think "Partnering" has a future in the Construction Industry, then the DRB concept for a non-adversarial dispute resolution fits like a glove. There is also a strange and uninformed opinion that DRBs offer an easy and inexpensive option that encourages disputes - but this view does not sit easily with the fact that many DRB projects have no disputes.

The powerful American Arbitration Association (AAA) seem to believe DRBs have a future. At a DRBF Conference I attended, I found that an extra item had been added to the Programme - a discussion on the INITIATIVE of the AAA to the Foundation as to the nature and intent of co-operation which could be agreed between the "associations" on the joint taining, appointments and operation of DRBs, indeed a Working Party was set-up at the Conference to pursue the proposition. But there is divided opinion - on one hand the DRBF would no doubt welcome a sort of Partnership with the well-known AAA, whereas many members continue to be concerned about:

> *"... Lawyers getting into the act.....".*

and damaging the swift fluidity of the DRB process by introducing their many legal, time-consuming, costly, argumentative hiccups! However, at this stage the AAA must consider that DRBs DO have a future - and do "Want to get into that act"! Again, the Commercial Court (a division of the High Court) has been taking part in a trial of ADR Orders - in recent years; their Working Party Report which supports ".... reaching settlements without need for a trial ..." - thus Judges will assess cases at the outset of litigation and, where appropriate, will order consideration of an ADR process - presumably including DRBs - and out of some 67 such

Orders - at that time - only 7 either did not proceed with ADR or failed to reach a settlement.

I would suggest that any one of the "future" points I have made would indicate a likely future for DRBs - indeed I would go further and say that the combination of such points suggest a very strong future for DRBs - once their effectiveness and availability becomes known to the Construction Industry; I would suggest that the Society might encourage the advertisement of such effective help toward amicable settlement of disputes, I am certainly convinced that DRBs

are an effective tool to such a valuable aim. I am old-fashioned enough to remember the old adage "Necessity is the Mother of Invention" - thus if Arbitration had remained an effective process, there would be no place for the Latham Report, Adjudication and DRBs and the like - indeed the acronym ADR would never have been coined; I find it impossible to accept that the Construction Industry favours confrontation in settlements rather than dispute control and conflict limitation which the DRB and partnering concepts provide.

In this context, it is interesting to note that in the March 2002 issue of "Tecbar Review" - the newsletter of the Technology and Construction Bar Association - Paul Darling Q.C. in his article *"What is the future of arbitration in the light of adjudication"* - where he wondered:-

> *"... whether adjudications popularity would continue to grow".*

(He discussed rogue results/mugging/enforcement/reasoned awards/recovery of costs/temporary decision etc.) and when on to say:-

> *".... the future of arbitration would seem bleak. But there is another way.*
>
> *It is perfectly possible to devise on Arbitration Scheme BASED ON CAREFULLY THROUGHOUT RULES* [the capitals are mine!] *that would be an attractive alternative to adjudication. Of course, it is either impossible or at the very least, difficult, to contract out of a statutory adjudication, but if an attractive alternative was offered (and indeed provided as an option IN THE CONTRACT* [the capitals are mine!] *then parties might well take it up.*

Having read my description of DRBs and their operation, I would suggest that you might agree that Mr. Darling (however inadvertently) has arrived at an accurate, if brief, definition of DRBs, by sound reasoning, having illuminated the flaws in arbitration and adjudication.

3. Partnering

The contractual procurement method of "Partnering" is growing in acceptance and whilst there are many Papers available discussing in some detail this concept - the Society's own September 2001 publication by David Mosey LLB is an excellent example - most merely mention

"disputes" in a cursory manner (Mosey's page 16 "Problems of disputes" while concentrating on PPC 2000 and the CIC Guide). I wish to concentrate on the philosophy of "Partnering" as expressed in the JCT (Series 2) Practice Note 4 and the close similarity I see in the philosophy of DRBs.

I see a similarity of philosophy in the growing concept of "Partnering" in the Construction Industry and the intent and operation of DRBs and indeed any thoughts in this area have strengthened the more I apply my mind to the procurement concept of Partnering and would put to you some comments you might find to be interesting as to the future of DRBs.

To this end, I studied the JCT 1998 Standard Form Editions Practice Note 4 (Series 2) - "Partnering" - and found some comments to be interesting with DRBs in mind. Indeed, I would commend to you the study of the whole of this Practice Note - but for the moment I quote a few extracts which I found to be particularly interesting:-

Page 2 Cl. 11 — *"Parties to a project should shape the agreement and not let it DICTATE what was never intended."* [The legalistic erudite debates on the Act which choked Arbitration to death!]

Page 2 Cl. 15 — *"Partnering is choosing to live by the spirit, rather than the letter of the law".* [... and so are DRBs, or should].

Page 4 Cl. 23 — [Quotes Judge Humphrey Lloyd QC and goes on to say ....] *"The Partnering Charter does not change the terms of the underlying contract* [i.e. the "words" - my comment] *but may well effect the way the Courts* [and the DRB Panel - my comments again] *will exercise their discretion".*

Page 5 Cl. 29 — Partnering Measures - *"setting up an initial partnering Workshop to agree objectives and the means of resolving any problems".* [Where better to agree a set of DRB "rules" - see Cl. 11 above.]

Page 5 Cl. 30 — *"The Workshop and Partnering Charter are important components of the success or otherwise of partnering as they establish the INTENTION at the inception stage with all the participants".* [Sounds like the INTENTION in

setting-up a DRB - doesn't it?]

Page 5 Cl. 32 "*There is a need for workshops to be maintained throughout the project ...* (and) *... provide for such workshops in the project documentation"*. [Also a DRB requirement!]

Page 6 Cl. 33 *"Key aspects underpinning partnering are ....* (7-off in total) *"Joint Problem Solving"*. ["Joint" you will note - not "by others"].

Page 6 Cl. 34 *".... during the construction process mistakes will be made (but).... the participants will attempt to resolve the problem without attributing blame ... However, unless the issue and allocation of costs is addressed at the outset in an NON-CONFRONTATIONAL* (again, the capitals are mine!) *way, there is potential for major problems to arise"*. [Again, sounds to me like the DRB philosophy.]

Although conceived quite separately, I put it to you that I think the philosophy of both interconnect exactly.

4. Conclusion

I am sure you will agree that the strength of the DRB is that its intent, administration details - amended as necessary by the Parties to suit the project, but operated by the Parties themselves - in an non-adversarial manner - is to arrive at a quick "Decision" in a dispute. Experienced professionals in the Construction Industry realise that some 99% of disputes in a project are competently dealt with already within the contract - it is therefore perfectly logical that the tantalising 1% - caused by a combination of circumstances which fall OUTSIDE the "norm" - should also be dealt with WITHIN THE CONTRACT by the people who apply their knowledge to arrive at the JUSTICE of the unusual matters brought to them and not merely to apply the "words" - i.e. the LAW - as seen by others whose complete range of tools are the "words" - the operation of which spelt the death-knell of the Arbitration Acts and regrettably may already be de-stabilising the intent of the Latham Report's Adjudication intentions, after all Latham wanted

"Mechanisms for avoidance of conflict and speedy dispute resolution"

- again, this sounds to me like a brief but accurate description of a DRB!

If we agree that the philosophy of "Partnering" and "DRBs" are in sympathy, then I would suggest that we could lobby the Contracting Trades Associations, Client organisations and the appropriate government departments responsible for applying PFI operations. I would suspect that whilst they all know and despair of the word "arbitration", they do not know of the more comfortable "in-house" and quick solution to disputes available in DRBs within the "Partnering" concept.

To return to the question in the title - "PPI: Partnering: DRBs- are they compatible?" - I trust I have persuaded you that the answer is unquestionably "Yes" - and must surely be a potent way forward for the Construction Industry.

…………………………………………………

Professor John S. Torrance - September 2003