

## Editorial

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When I agreed to pen a short editorial for this issue I had no idea of its content. I was lucky then that the papers here have a direct relevance to my day job as an NEC (formerly the New Engineering Contract) and procurement specialist. I am sure they will be of interest to you too.

Over the last ten years our industry has tried to develop more collaborative ways of working and more collaborative contracts to support that. In the UK most have moved on from just the ‘initial partnering workshop’ and the glossy ‘partnering charter’. There are procurement routes and contracts that genuinely provide joint incentives to collaboration and the initiated provide appropriate investment in training and systems to support the better ways of working together. In Hong Kong, I have seen government departments very sensibly promoting training in collaborative working alongside their introduction of NEC contracts.

In ‘Partnering in practice: an analysis of collaboration and trust’, Challender *et al.* (2014) examine how partnering is really received and the extent to which ‘austerity’ in the UK has, in some cases, stopped clients innovating and has driven them back to the traditional focus on lowest bid price. The authors give us a short history and definition of partnering and go on to describe the key role of trust in any collaboration. They then share the results of their direct consultation with practitioners. The paper suggests that, in some parts of the market, austerity and the resulting tighter market have tended to limit investment in the sort of systems, like building information modelling (BIM), that can support and need to be supported by collaboration. Discussions with a set of practitioners confirmed that the all-important trust cannot be engineered by contractual conditions but needs to be developed over time. This confirmed the benefits of long-term ‘strategic partnering’ over one-off ‘project partnering’. The authors suggest that clients should continue to invest in collaboration, not least to make the most of the possibilities of BIM. The paper is a useful reality check and is recommended for anyone involved in any way with procurement.

And then it all goes horribly wrong! However collaborative the intent at the start, however good the ‘trust’, we all know that construction contracts can lead to disputes. This is typically caused by poor contracts, poor contract management or both. As an industry we should put more effort into

improving both but we do need options for resolving disputes when they do happen. Agapiou and Clark (2014) give us a really well written ‘reflection on construction mediation in Scotland’ in the second paper. The authors conducted questionnaires and interviews with lawyers and ‘end-users’ to draw out perceptions of mediation and other dispute-resolution solutions, including adjudication. The authors note that one in five end-users questioned were not even aware of mediation as an option and suggest professional bodies should do more to raise its profile. They suggest that lawyers, often the ‘gatekeepers’ of the end-users’ disputes, might recommend mediation more often to their clients. They point out that mediation as a route struggles against the default right to adjudicate in the UK and the familiarity with adjudication on the part of the lawyers. The industry suffers from not being able to learn from (private) adjudications. Mediation meanwhile is a victim of its own confidentiality: the success stories are hidden. The survey included tracking of the success of mediation with a rate of 74% being reported by the lawyers. Unlike some papers on dispute resolution, I found this one easy to read and I recommend it to you.

The journal this time concludes with a discussion on a recent paper (Tamburro *et al.*, 2014) and a very positive book review – just how did they condense guidance on delay and disruption claims into 75 pages?

*Management, Procurement and Law* supports and contributes to the community of those interested in the management, procurement and legal aspects of our industry. Please take a moment to contribute to the debate on the important issues covered by the papers in this journal by submitting your contribution as feedback to the authors.

### REFERENCES

- Agapiou A and Clark B (2014) A reflection on construction mediation in Scotland. *Proceedings of the Institution of Civil Engineers – Management, Procurement and Law* **167(6)**: 265–272, <http://dx.doi.org/10.1680/mpal.14.00028>.
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Tamburro N, Wood P and Broome J (2014) Discussion: Alliancing in

Australia: competing for thought leadership. *Proceedings of the Institution of Civil Engineers – Management, Procurement and Law* **167(6)**: 273, <http://dx.doi.org/10.1680/mpal.14.00031>.