

# **MCUC** **NEWSLETTER**

**Michigan  
Construction  
Users Council, Inc.**

May/June 1997

*Affiliated with: The Business Roundtable, Construction Industry Institute, Construction Innovation Forum, Construction Labor Research Council, and Michigan Nature Conservancy*

**Promoting safety, education, innovation, quality improvement, and cost reduction in construction.**

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## **How The Owner and User Can Improve Total Construction Project Performance Without Additional Cost**

*by: Ralph J. Stephenson, P.E. Consulting Engineer*

A short time ago the Michigan Construction Users Council, along with several other well respected construction organizations, sponsored a mock trial to demonstrate what happens when a design and construction project turns sour.

The vividness of the courtroom drama as it was acted out, and the intelligent panel and audience discussion that followed showed that many design and construction professionals are beginning to understand how a facility expansion program can become a nightmare for all involved.

Much credit for sharpening the focus on trouble jobs can be given to a simple technique called alternative dispute resolution (ADR).

"Alternative dispute resolution is a method of resolving disputed design and construction issues outside the courtroom. Resolution is normally accomplished without the participation of legal professionals. Resolution is driven by the active, sustained involvement of disputing project participants. When needed, the services of a disinterested, skilled, and experienced third party construction professional may be sought for advice, for leadership, or in extreme cases, for rendering a non binding decision."

Thousands of magazine articles, books, seminars and association programs have carefully and expertly presented the benefits of ADR systems over the past 17 years. These continue to be a rich source of procedural information, and most explain in detail the actions needed for effective implementation.

In simplest terms alternative dispute resolution consists of the progressive use of four negotiation types leading to final resolution. These are:

**Step 1 - Prevention of destructive disputes.**

**Step 2 - Internally driven negotiation leading to resolution.**

**Step 3 - Internally driven resolution informally led by an exterior neutral.**

**Step 4 - Internally driven resolution formally led by an exterior neutral.**

"An exterior neutral is a technically trained, educated, and credentialed professional who is active in the planning, design, and construction industry. The exterior

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neutral must be capable of objectively listening, analyzing, and evaluating construction related demands or claims which are in dispute".

What now must be addressed by industry professionals is how to use the lessons we have learned in applying these four negotiation styles.

Fortunately there is an abundant pool of data that identifies exactly what is needed for design and construction project success. This pool of data is contained in the hundreds of design and construction partnering charters prepared each month in the United States and elsewhere. Partnering is a step 1 preventive ADR measure and is designed to resolve destructive conflict before it happens by establishing noncontract behavioral guidelines.

"A partnering charter is a set of guidelines prepared, agreed to, and signed by the project participants. It contains a mission statement, and a set of noncontract charter objectives designed to help achieve successful contract performance. The charter is an agreement in principle and must not supersede or supplant the planning, design, and construction contracts in place or to be written and executed."

As a general rule the partnering charter is prepared by representatives of the total project team and will contain from 15 to 30 explicit statements which the team feels contain the keys to successful performance by them and others on the project. These statements are formulated in project workshops attended by the owner, users, designers, contractors, and regulatory agencies involved in the project. During a partnering charter session, participants will usually define from 100 to 150 problems that they encounter on similar projects. By combining these statements and eliminating duplications the final signature charter usually will contain from 15 to 25 succinct suggestions

that, if implemented, will contribute importantly to the project's success.

In a recent analysis of several charters it became apparent that most problems experienced by design and construction practitioners belong in one or more of 45 well defined categories. For the purposes of this article I have listed below the 10 categories mentioned most frequently and have provided under each a sampling of the suggestions contained in 46 charters I have helped to prepare. They represent, for the most part, inexpensive suggestions which if followed, will in the opinion of the authors (construction professionals attending the partnering meeting) materially improve design and construction project economy and quality and personnel morale and performance. All this with no negative impact on the project cost or time of construction.

## Examples of Recommended Project Team Actions To Help Prevent The 10 Most Frequently Mentioned Project Problems

(Drawn from 46 actual project charters with minor editing to improve readability)

### 1 Deficient job management

- Anticipate events - be proactive, avoid surprises
- Be familiar with the contract documents
- Design and construct the facility to recognize the need for the builders and the designers to achieve a reasonable financial profit on their work.
- Develop an organizational matrix showing lines of communication and responsibility to be maintained on the project.
- Keep paperwork to a minimum

- Maintain a close relationship between expectations and reality
- Make decisions in a timely manner and stand by the agreements you have made
- Maintain an adequate management and work force to fulfill contract commitments
- Plan for future service access to equipment during mechanical, electrical and plumbing installation
- Prepare and publish a calendar of project events indicating when key personnel are required to participate in project management activities
- Recognize and be sensitive to the needs of other stakeholders on the project
- Ensure that the design and specifications are understood and acknowledged by all participants
- Provide adequate backup data, within expectations, to allow timely and accurate decision to be made by members of the project team

### 2 Poor communication with others

- Empower on-site personnel to make decisions with the objective of shortening lines of communication, thus expediting responses and decision making
- Communicate with those affected, clearly, accurately and in a timely manner
- Prepare, publish, keep current and respect a chart showing channels of communication, responsibility, and authority
- Anticipate, identify and accurately communicate potential job problems
- Communicate the principles of partnering on this project to all participating organizations and individuals
- Identify planned and required shut downs and outages from and to the designers, builders, and the owner's operations staff
- Make progress and technical meetings productive and brief by

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There was no such "clear intent" in the FMLA. As a result, the district court found that the arbitration provision was "all encompassing, extending to 'any dispute or difference of opinion . . . between the Company and any of its employees covered by this Agreement, involving the meaning, interpretation or application of the provision of this Agreement.'" Because the Agreement specifically covered family medical leave, disputes arising out of the application of that provision clearly were within the scope of the grievance and arbitration provision. Because the employee failed to follow through with his grievance, his cause of action based on the Family Medical Leave Act was dismissed for failure to exhaust his administrative remedies. □

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**MCUC  
CALENDAR**

June 12, 1997  
" Incentives (For the company and its Employees)" Owners Roundtable Meeting 1 hour prior to MCUC Forum. — Holiday Inn West, Lansing

August 21, 1997  
Golf Outing at Royal Scot, Lansing

September 18, 1997  
" Technology - Computer Software Trends" Owners Roundtable Meeting 1 hour prior to MCUC Forum. — Holiday Inn West, Lansing

October 23, 1997  
Fall Conference, (coordinated with Professional Education Council, last part of a three part series) "The Owner's Role" Holiday Inn West, Lansing

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preparing well, and bringing both problems and solutions to the table.

- Promptly prepare and respond to requests for information, substitutions, and clarifications of project documents.

- Stay in touch with the project, i.e. reading meeting minutes, attending meetings as needed, and being available for input.

- Prepare and respond promptly and completely to requests for information and clarification of contract documents.

**3 Poor staff morale and attitudes**

- Be available.

- Be willing to suggest and consider cost and time effective options.

- Establish and maintain good informal working relations on the job.

- Extend the spirit of partnering to all project participants.

- Promote and adhere to acceptable standards of conduct by the project team on the site.

- Respect and treat other's and their work as you wish you and your work to be treated; accept responsibility for your damage of other's work.

- Respect design and construction excellence as a fundamental goal to be achieved.

- Respect financial profit as an incentive for private sector stakeholders.

- Practice fairness in price proposals, back charges, and all other financial matters.

- Have fun and celebrate the successful completion of the project.

**4 Maintaining personnel quality and resolving personnel problems**

- Do it right the first time and strive to achieve a zero punch list

- Identify and remedy incorrect or poor quality performance in a timely manner

- Maintain adequate management, material resources, and work force to fulfill contract commitments

- Maintain continuity of key job personnel

**5 Being a good on-site neighbor**

- Recognize that project conditions and decisions affect other partners in achieving the overall design intent.

- Maintain, in conjunction with other stakeholders, a work area plan to be implemented by affected stakeholders.

- Carefully evaluate and be sensitive to the impact that construction activities may have on the environmental integrity and concerns of the project neighbors.

**6 Failure to take timely action**

- Provide adequate documentation, and prepare, package, and process submittals in a timely, fair, and considerate manner consistent with the priorities of the contractors, and the owner.

- Provide for timely and professional technical inspection services with appropriate documentation and feedback to those affected.

- Prepare and publish an issue resolution policy which stresses prompt resolution of conflict at the originating or lowest possible management level and seeks to avoid litigation.

**7 Deficient planning and scheduling**

- Solicit all team member's input for planning and scheduling.

- Mutually prepare, publish, implement, and keep current a project action plan and schedule of work that is useful to all stakeholders.

- Prepare, distribute and regularly monitor and discuss, with subcontractor input, a master project schedule, and update schedule as required.

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## **8 Poorly defined organization, authority and responsibility**

- Be accountable for your actions
- Prepare and publish a project directory showing people, work category, position and alternate contact.
- Prepare, publish, and keep current a chart of channels for communication, responsibility, and authority.

## **9 Poor work-site conditions**

- Continue to maintain continuity of work points between trades. (Work points refer to building control coordinates and elevations.)
- Maintain a safe, orderly, well organized work site.
- Prepare, publish, and enforce a construction traffic and parking plan
- Prepare, publish, and implement a project clean up program for contractors on site.

## **10 Deficient revision processing**

- Accurately price, approve, and process changes to the project in a timely, reasonable and fair manner.
- Work to improve revision and change order processing, including a streamlined process for minor

changes (\$1000 or less).

- Provide accurate data and adequate time to ensure pricing changes are fair and timely.
- Prepare, package, and process submittals in a timely, fair, and considerate manner consistent with the priorities of the contractors, designers, and owner.

As we look at the above list there is a great temptation to say "that item is already covered in our contract documents." The frequency with which this statement is disproved in partnering meeting and job meetings on major projects staffed by competent participants is somewhat puzzling. It leads to a conclusion that we are not as familiar with our contract documents and our project as we should be to obtain optimum performance by proper management.

The road to good design and construction must start with a sound concept in the owner and user's mind. It must be defined by a well written program, and finally built and occupied by a team having a collective desire for excellence.

The guidelines have already been written by thousands of experts for

use by those who wish for project success. Now all we have to do is use the recommendations that are available. Try it -- good job management works! □

*Ralph J. Stephenson, P.E., is an engineering consultant who has a diversified background in land planning, facilities location, building design, and construction. Mr. Stephenson earned degrees at Lawrence Institute of Technology (Bachelor of Science, Mechanical Engineering), and Michigan State University (Master of Science, Civil Engineering). He has been associated with such firms as Smith, Hinchman, and Grylls, Victor Gruen Associates, Benjamin Schulz Associates, and the H. F. Campbell Company. With the latter three organizations Mr. Stephenson occupied executive positions as vice president. In 1962 he started his own consulting practice, specializing primarily in providing operational and management direction to owners, designers, and contracting firms. Mr. Stephenson can be reached at 323 Hiawatha Drive, Mt. Pleasant MI 48858 (517)772-2537*

## **Attendees of the MCUC April Meeting "Application of Value Drivers in Operational Measurement Systems for Corporate Real Estate Design and Construction" in action.**

