

Hard Hats and Soft Hearts: Relationships and Contracts in Construction and Human Services

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INTRODUCTION

Both government agencies and the private sector have increasingly moved away from a service delivery mode in which independent organizations provide highly specified contracted services to one that involves service provision through looser arrangements based on interaction and collaboration among a variety of stakeholders. This phenomenon is facilitated in the private sector through relational contracting underpinned by trust and the pursuit of common goals rather than by competition and conventional adversarial contracts (Thompson and Sanders 1998, Lazar 2000; Keast, Mandell and Brown, 2005). Contracting based on building and supporting relationships between contracting parties shifts from an adversarial focus based on conventional notions of principal-agent contractual obligations (Walker and Hampson, 2003) to one in which the emphasis is on equal participation by all parties involved.

Within both the private and public sectors, the construction industry has been at the forefront of the adoption of relational contracting and relational approaches to procurement. Within the human services arena there has also been a strong movement toward more collective arrangements based on interaction and collaboration. However, this has occurred largely without the formalized use of relational contracts. Instead, more informal, interpersonal relationships and professional networks guide the interactions.

This paper examines these two contrasting industries and outlines how each has dealt with this movement toward more formalized relational arrangements. Although in both industry sectors the emphasis in dealing with complex projects is moving toward more of a partnership arrangement, the movement toward these relational contracts has apparently been more successful in the construction industry than in the human service sector where the emphasis is still on service agreements that highly specify responsibilities and contractual arrangements.

The first section looks at what is meant by conventional contracting, service agreements and relational contracting. The paper then examines examples based on case studies in the construction industry as well as human service providers to uncover the differences and similarities between the contractual methods used by these two sectors.

In the findings and discussion section an analysis is made of the impact of identified contextual factors on the implementation of projects in both construction and human service sectors. These factors include the role of the citizen in contractual arrangements, history of relationships, relative power of members, and the political/cultural context (Limerick, Cunnington and Crowther, 1998; Mandell & Steelman, 2003; Walker and Hampson, 2003). This section explores how some of these factors impact differentially on the 'hard' and 'soft' industry sectors and suggests reasons why human services agencies may not have adopted formalized relational contracting mechanisms and principles.

Finally, by uncovering and identifying these differential implementation processes and contextual factors, the paper raises the questions about the use and efficacy of relational contracts.

CONCEPTS OF CONTRACTING

Traditional Concepts of Contracting

The procurement of goods and the delivery of services have traditionally relied on strategies of contractual specification to establish a framework for parties to engage with each other. A conventional contract is a binding mutual promise or mutual agreement between two or more parties, recognised by the law and enforceable before the court (Guest, 1989). In essence a contract implies a drawing together of persons, suggesting a relationship of good faith, reasonableness and fair dealing.

Hard Hats:

In the construction sector, the primary strategy used has been conventional contracts in which parties rely on exchanges based on market transactions. Conventional contracts were based on the ideas of a laissez-faire economy, self-interest, individual liberties and legal principles. It was also expected that these contracts were legally binding and would be upheld by the courts. As a result, the parties to a contract largely treated each other as adversaries. Further, because the contracts did not clearly specify the allocation of risks and often lacked the definition of the different roles of the participating parties, litigation was frequent (Quick, 2002).

More recently, however, the construction industry has been increasingly confronted by large scale and complex projects requiring cooperation to secure the scale and scope needed to be successful. In addition the construction industry is challenged to engender the higher levels of innovation necessary to successfully and profitably complete projects. Within this environment, conventional contracts, with their propensity to litigious behaviour have become increasingly costly and have resulted in damaging disputes and a lack of cost savings (Quick, 2002). Further they are understood to work against the cooperation required to produce innovation. In order to respond to these issues, businesses involved in conventional contracts looked to change the nature of their contracting arrangements resulting in a movement away from a reliance on conventional contracts to an emphasis on relational contracts.

Soft Hearts:

In the human services field, the contractual arrangements are known as service agreements. These agreements depend on a government entity as purchaser specifying the goods and services required to be delivered to individuals or groups in the community by third sector organizations and increasingly the private sector (Public Accounts Committee 2002). While contractual in nature, service agreements are not legally binding but

nevertheless prescribe the deliverables and accountability procedures and acknowledge some scope for negotiated action (Public Accounts Committee 2002).

Over time, government agencies in the human services arena have moved from historical grant based allocation to service agreements, and subsequently to partnership arrangements with a relational component (Lyons, 2003; McGregor-Lowndes and Turnour, 2003). These changes came about because of the lack of results in this arena to solve the complex problems that governments faced (Mandell and Steelman, 2003; Brown and Keast, 2003; Huxham, 2000). However, it is argued in the current application of partnership arrangements that although underpinned by professional relationships between practitioners, government, through its funding authority and power, actually controls the “partnership” rather than it being an equal arrangement.

Hard Hats and Relational Contracts:

Relational contracting in the construction industry seeks to overcome the adversarial nature of conventional contracts as well as trying to alleviate or limit the high level risks that individual organizations had to bear in order to successfully complete projects. Relational contracting therefore tries to identify a fairer allocation of risk as well as clarifying the roles of participants involved. This shift is achieved through an increased emphasis on relationship building, greater and “thicker” communication and a realization of the benefits of a mutual approach to sharing gains and risk.

The Australian Contractors Association (ACA) defines Relational Contracting as:

A process to establish and manage the relationship between parties that aims to: remove barriers, encourage maximum contribution; and allow all parties to achieve success.

A main differentiating feature of these arrangements from traditional concepts of contracting is how the risks of a project are assumed. Whereas traditional contracting partners may share a commitment to achieve success in a project, the risks of project liability are not shared but are shifted to other parties usually lower down on the supply chain such as sub-contractors (Quick, 2002). Another significant distinguishing feature of relational contracting is that project risk as well as reward is shared. This approach results in a situation where one party’s poor performance will result in lost rewards, and even actual losses, for all parties (Walker and Hampson, 2003). Core values underpinning successful relational contracting therefore are trust, respect, innovation, fairness, reciprocity and mutuality that mitigate risk and maximize potential gains jointly for all partnering organisations. These principles form the basis of various relational contracting arrangements including alliancing, partnering, joint ventures and a diverse range of networked type arrangements (Jones, 2000).

Many firms in the construction industry have experimented with the use of relational contracts. Success in such arrangements is dependant on the ability to overcome rivalry, achieve commitment of the parties and establish relationships based on trust (Bubshait

2001; Walker and Hampson, 2003). In the construction industry the primary forms of relational contracts have been project partnering and project alliancing. The two differ in that alliancing contracts contain contractual obligations in regard to the relationship between the parties. Partnering, on the other hand, usually consists of a non-contractual relationship charter that runs alongside a traditional contract (Manley and Hampson, 2000). Alliancing contracts therefore more tightly enforce relational aspects and are being found to be increasingly useful in complex, high risk projects (Manley and Hampson, 2000).

In the construction business motivation for the uptake of these different forms of relational contracting has arisen from the desire of firms to build a critical mass of expertise and service/product offerings in order to better compete (Walker and Hampson, 2003). The adoption of relational contracting has primarily sought to overcome the deficiencies of traditional contractual arrangements, in particular, their propensity to end in costly litigation and project over-runs (Waterhouse, Brown and Flynn, 2000).

“Soft Hearts” and Relational Contracting:

While a range of private sector industries and some government agencies involved with construction and building have adopted and operationalised the notion of relational contracting together with horizontal relationships and equal partnerships, government agencies in the arguably ‘softer’ human services arena have struggled to fully embrace and effectively implement this mode (Keast and Brown, 2002; Brown and Keast, 2003; Brown and Ryan, 2003; Lyons, 2003; McGregor-Lowndes and Turnour, 2003). Instead they have continued to rely on more tenuous and informally based relationships as the process to establish terms of agreement.

If government agencies have moved to any extent to relational aspects in service agreements it is due to the growing recognition of the power of community groups and the need to pay attention to their issues and demands. In addition, the complexity of problems in the human services field is such that no one government agency, nonprofit or community group can handle these problems on their own. There is a growing recognition of the need to build partnerships in which all those involved in this field can come together to develop more innovative means of dealing with these concerns. This is coupled, however with the propensity or inability of government to not let go of their perceived control over those in the human service field. Because of this, the emphasis is still on favouring the government as a powerful financial controller. As a result, these arrangements often revert to ‘hard’ contracts and authoritarian control (McGregor-Lowndes and Turnour, 2003; Brown and Keast, 2003). In the field of human services, the power of both community groups and nonprofits is limited by their lack of funds. These groups are still therefore dependent on government funding which often hampers their ability to move to a more relational contracting arrangement.

A Comparison of Conventional Contracts, Service Agreements and Relational Contracting

Whereas traditional contracts have required merely the fulfillment of material obligations, relational contracting requires delivery of relational obligations that are aimed at improving the material outcomes. The key elements of successful relational contracting outlined thus far including trust, open communication, excellent working relationships and shared risk, suggest that this form of service delivery demands a very different method of operation to that required under traditional contractual arrangements.

Table 1 presents an overview of the major differences and similarities among conventional contracts, service agreements and relational contracts.

(Put Table 1 here)

In the following section examples are given from multiple case studies to illustrate the way the construction industry and the human service sector make use of conventional contracting, service arrangements and relational contracting. These examples highlight the differences and similarities between the implementation of procurement arrangements in the human service sector and the construction industry.

CASE STUDIES

Hard Hats:

The first three case studies occur within the construction industry and involve the same government agency purchaser. All cases involved the construction of major infrastructure items with a high degree of complexity, large public expenditure and the increased project failure risk and electoral risk associated with such projects.

Case one initially involved the awarding of several traditional contracts to complete various sections of a high profile, major project. Due to mounting conflict between the purchaser and contractors and a threat of major cost over-runs, the government purchaser implemented relational contracting. While still resulting in major cost over-runs, it is difficult to accurately quantify how much more these may have been if elements of relational contracting had not been implemented.

Learnings from Case 1 were then taken forward into Cases 2 and 3 which, from the outset, were set up as alliance arrangements containing contracted relational aspects implicit in such arrangements. Comparative to the first case, these major construction projects were drawn to highly successful and award-winning conclusions. Case 2 was completed ahead of schedule and under budget while Case 3 successfully managed political, financial and cultural sensitivity aspects associated with the project. In these two cases the promise of relational contracting was thus fulfilled.

Political expediency was a major issue in Case 1. The project was the largest of its type undertaken within the state jurisdiction, was highly visible and politically sensitive. An unpopular previous project plan had been abandoned after an electoral backlash that contributed to a turnover of government. Given this, the revamped project was 'fast-tracked' and a means sought to manage the relationship between government and citizen. To achieve ongoing communication with local government, corporate and private citizens affected by the project, a project office containing departmental staff was established to deal directly with stakeholders. In addition, an external communications group was contracted for the life of the project to co-ordinate public meetings and generally act as facilitator of communication between government and citizen.

As part of the 'fast track' process all successful construction bids were initially bound by traditional contracts except that in this case the responsible Department bore a disproportionate amount of the risk for unforeseen contingencies (General Manager, personal interview 15 May 2000). This was exceptional in that the assumption of risk in most traditional contracts tends to be shifted to lower-level sub-contracting parties. These contracts were, at the time, considered preferable as they were perceived to reduce disruption to communities affected by the construction. Furthermore, the apportionment of risk to government was considered politically expedient so as to avoid pre-construction delays caused by bidders seeking to establish what risks needed to be factored in.

Because of the size of the project, only large construction companies with sufficient capital backing were eligible to bid. The contracts were awarded, in all cases, to the lowest bidder. It was later considered that successful tenderers purposefully bid low to better their chance of success so as to be aligned with a very high profile project. The combination of 'big business', traditional contracts and low bids became the catalyst for poor relationships, threatened delays and cost blowouts. Due to the low bids, contractors sought to cover additional costs through ambit claims and two sections of the project began to fall behind schedule. The relationship with the large private sector contractors was also viewed as both adversarial and unequal:

You are suddenly out there mixing it in big business and big business will make mince meat of a Government Department hands down because that's the game they play, they play it right down the line and if there is a crack in the armour they will be in for their buck (dollar). (Departmental Manager)

The utilization of traditional contracts meant that the department had no enforceable means to more closely align the goals of the contractors with those of government. This was a critical issue as government strived to maintain their reputation with citizens, both private and corporate, affected by the construction. The solution to the delays and cost blow-outs was to replace two of the existing contracts with partnering arrangements that included a formalised issue resolution process. These new contracts also contained clauses offering performance bonuses while at the same time altering the apportionment of risk so that contractors were exposed to some of the potential loss. A relationship manager from the department was appointed to facilitate the issue resolution process. This appointment was mutually agreed to by the parties concerned.

In contrast to the first case, Case 2 was established as an Alliance Contract from the outset. Under this arrangement alliance participants took collective ownership of all risk associated with delivering the project in ratios that were pre-set and mutually agreed to. The project was large and contained high levels of technical complexity; however, it did not have the visibility or the political sensitivity of Case 1. The project was set up as a ‘virtual organisation’ with close day to day working relationships established. To this end designers and geo-technical staff from the alliance partners were co-located on site with construction staff. Relationships were managed through the appointment of a ‘culture manager’ to champion the alliance approach and assist in maintaining harmonious relationships and encourage project integration, in part by providing coaching and support services. As with Case 1, a community liaison officer was appointed who coordinated community activities and handled enquiries. The role fostered community ownership and ‘buy-in’ to the project.

The relational aspects of the alliance resulted in innovative solutions being achieved to overcome various difficulties that arose during the life of the project:

“... being in an Alliance is like being a kid in a lolly shop – with access to an extraordinary depth and breadth of expertise” (Executive, Private Contractor)

In conventional contracts, the price is specified and the conditions to get to that price are pre-specified. If circumstances change there is higher potential for exceeding budgets in conventional contracts and new terms and conditions are required to be written. With relational contracting, partners are able to pool ideas together to achieve better problem solving capabilities and contain budget ‘blow-outs’. In this way, early delays in Case 2 were overcome through co-operative means that came up with innovative solutions to spread and share costs over later stages of the contract rather than seek to apportion costs to the ‘erring’ party.

Case 3 again utilized Alliance contracting as the means to undertake the project. While substantially smaller than cases 1 and 2, there was political risk in that multiple levels of government were involved and the construction was also culturally sensitive. The contract for construction was awarded to a joint bid by the commercialized provider arm of the department and a large international private sector construction company. The land under construction was subject to a native title claim and it was imperative to gain the trust and cooperation of the traditional land owners. The alliance therefore formally recognized the traditional owners of the land as a party to the agreement. Furthermore, the agreement provided for indigenous employment on the project along with associated training for nationally accredited certificates in civil construction. The result was a 50% indigenous workforce many of whom are to be employed on the next stage of the project.

Early impact studies uncovered and identified an area of significant cultural significance containing thousands of Indigenous artifacts. Due to the cultural sensitivity and remoteness of the project location there was a reliance on previous relationships that contributed to the public-private sector joint bid for the project construction. The project

successfully involved the joint identification and preserving of cultural artifacts and continued relationship building through ongoing consultation with all parties involved.

These three cases demonstrate the various contractual forms the construction industry has utilized to overcome the adversarial nature of traditional contracts; the difficulties associated with altering contractual terms in traditional arrangements and how alliances permit fluidity of contractual terms that are capable of meeting changing contextual circumstances and addressing various forms of risk including financial, political and project risks. Relationships, however, remain highly formalized and ‘set in concrete’ through contractual, as opposed to ‘natural’ development.

Soft Hearts

Case studies within the human services arena also display an application of relational arrangements as a basis for developing policies and delivering services. These arrangements are variously referred to as partnerships, collaborations and coalitions. There are two levels at which these types of arrangements are formulated and carried out. The first is at the strategic or tactical level and the second exemplar is located at the practitioner and regional operational level.

At a strategic level, examples of such relational arrangements are evidenced by the emergence of cooperative and collaborative research projects between departments, universities and community organizations. While these agreements are characterized by an upfront and legal contractual agreement that specifies the deliverables to be achieved, largely the terms of the agreement, that is the operating process, are unspecified. Instead, the terms of the agreement are worked out by way of preliminary and subsequent interactions and iterations between the parties.

Key to this process is the understanding that while the objectives or deliverables for the projects are largely set or predetermined, there is scope for ongoing discourse around further definition of the research issue, the stated agreements the processes to be employed and the involvement of both parties. Such fluidity in terms of the statement of agreements opens opportunities to review and restate the research focus as required through iterative or ongoing phases of negotiation and re-negotiation. The inherent benefit of such an interactive approach to the development and operationalisation of the statement of agreement is that the outcomes sought will better reflect the research problem and thus increase the potential for successful outcomes (Adams and Hess, 2000). The basis of these arrangements centers on relationships between the contracting parties. It is argued that interpersonal relationships and particularly prior relationships, trust and a common language form the cornerstones of this approach.

The second case occurs at the practitioner and regional service delivery level. Similar to the strategic level cases, there has been a related shift in the way that services are developed and delivered on the ground. A case exemplar of a service intervention model provides some insights into the use of relational aspects in securing project outcomes.

The Services Integration Project (SIP) came into being in response to a regional crisis the outcome of which was that community organizations and government shifted from a service delivery model focused on individualized grant allocation and service agreements to a collective orientation based on pooled funding and a highly relational operating framework (Keast et al, 2004). In this context, relational arrangements have been looked to in order to fill the gaps and inadequacies apparent in the historical highly fragmented service delivery framework and the competitive nature of prior funding arrangements in the human service sector. The shortcomings of highly individualist ‘siloes’ approaches were conceptualized as ‘an intervention’ orientation that comprised ‘single departmental workers, all doing our own thing’ (SIP, 11 Oct 2001). Under a relational approach, it was believed there was a greater commitment to projects and continuing actions and a perception of greater success through ‘integrated people in integrated systems’ (SIP, 11 Oct 2001).

The formalized approaches of shared learning through the introduction of a Graduate Certificate was found to be a significant contributor to bringing the group together, building enhanced relationships and establishing the new way of working together:

Relationship building and maintenance have been very important to the operation of the project. The graduate certificate was a great aspect of this and a critical element in establishing the relations we now all have (SIP 11 Oct, 2001).

There were also more formalized processes used to guide the development of the relationships including the establishment of protocols and collective processes of decision-making. These mechanisms set the framework necessary to re-orientate operating models from silos to collectives with common values and vision:

It was really about re-establishing the value we placed on each other as people and professionals and committing to working more holistically together (SIP, 5 Aug 2002).

Some of the other relationship-building strategies employed within SIP included facilitators to improve interactions, reflective learning and informal meetings. The use of relationship facilitators during meetings was a deliberate strategy to foster closer ties and better understandings between the different members. Reflective practice and action learning as part of the meeting processes enabled enhanced dialogue and insights into relational dynamic and their impact on group processes and outcomes. Supplementing these more structured relationship facilitation processes were the regular use of informal meetings and social gatherings. These assisted in breaking down barriers between differing groups, fostered extra-organisational communication and established common values. In shifting to a relationship approach, SIP focused on developing higher order relationships and common value sets.

The findings from the case studies indicate that informal professional networks and relationships are critical to this process. Kewell, Hawkins and Ferlie’s (2002) findings on implementation networks within the health sector in the United Kingdom support the role of informal professional networks as the basis to the formation of these new partnerships.

Further we argue that drawing from the case studies, crucial processes and mechanisms of relational arrangements within the human services arena include higher level of discourse and discussion upfront, informal meetings known as ‘Coffee Chats’, negotiated outcomes, processes and settlements, relationship facilitators ‘start-up workshops, action learning team processes, development of common language and culture and formal education programs .

Both sectors have shifted to a relational focus in procurement projects. This adjustment has occurred in response to the increasing complexity of many projects, the failure of conventional contractual procurement arrangements to accommodate the need to work more cooperatively to overcome such complexity and especially to circumvent the propensity of adversarial litigation. However, the construction industry has operationalised and extended the concept of contracts built on relational approaches further than the human services arena. The next section explores the contextual differences that explain why this may be the case.

FINDINGS AND DISCUSSION

Several areas such as the notion of the role of the citizen in contractual arrangements, history of relationships, relative power of members, and the impact of the political/cultural context have been described in the literature as contextual factors that can have an impact on moving toward relational contracts (Limerick, Cunnington and Crowther, 1998; Mandell & Steelman, 2003; Walker and Hampson, 2003). In this section, these contextual factors are applied to understand the differences between the construction industry and the human service sector in their ability to move to relational contracts.

The Role of the Citizen in Contractual Arrangements:

Although the public sector has focused on the need for partnerships in certain complex types of projects involving either the construction industry or the human service sector, the degree to which these projects become actual partnerships have to do with the impact of the role of the private sector versus the role of the citizen as a partner. The perception of the private sector is that they have expert knowledge that strengthens their role as a partner, whereas citizens (or community groups) are perceived as lacking the expertise needed to be considered a full partner. Because of this, rather than rely on relational contracting, the human service sector has not treated them as full partners. Instead, the emphasis has remained on service agreements that in some cases are underpinned by start-up workshops, action learning team processes, relationship facilitators, development of a common language and culture and formal education programs for the citizens and community groups. These mechanisms serve to both establish the terms of engagement between parties and to increase the capacity of citizens and community groups to better participate in these projects. This approach provides a basis for seeing community groups as having the wherewithal to become more equal partners than otherwise might be perceived.

History of Relationships:

Projects in the human services field have conventionally been based on formal contracts and/or grants which have relied on the relationships between those professionals in the public organizations and those in the nonprofit or community organizations to be fully operationalized. It would seem that these relationships have been utilized to facilitate the implementation of projects rather than developing formalized relational contracts. Further, historically non government and/or community organizations rely on government funding for their operation and existence. This establishes a dependency relationship in which government maintains a level of power over these groups. In addition, there has been a history of distrust between government and nonprofit organizations and/or community groups because of that power relationship and because it was perceived that government did not always follow through on original agreements. Establishing relational contracts, which might be seen as giving more power to citizen groups, have therefore not been fully utilized. The move toward relational contracts in the construction industry on the other hand was acceptable by the public sector because it was introduced by the business sector that government considered as having the wherewithal to determine what would be best for them. Since this was not the case with the human service sector, they have not yet been willing to move toward relational contracts, although they have always relied on the relationships that existed in this arena.

Relative Power of Members:

The public sector has come to perceive that projects involving the construction industry serve a client base that is very different from those in the human service sector. The clients in construction industry projects are seen as being well-organised and politically connected interest groups and citizens. These groups are seen to have much clout in whether a project will be realized and the public sector has come to engage these groups up front in order to avoid later conflicts that may stymie a project. In the human service sector, however, the client is perceived to come from marginalised members of the community who are recognized to have little clout in terms of power and voice (Brown, Gyde, Renwick & Walsh, 2003). Thus, although citizens may be consulted, they tend not to be fully engaged in the decision making process. Although this perception is changing to some degree, the overwhelming modus operandi of the public sector in this arena has been to ignore these groups. This translates into a stronger power base for the construction industry than that of the human service sector. Partnership arrangements are therefore seen as beneficial to both parties in the construction industry whereas within the human service sector there continues to be a need for control through more authoritative, top-down arrangements, rather than equal partnership arrangements that might then require a relational contract.

Political/Cultural Context:

There are a number of factors involved in this area. First, at the political level, it is believed that if government fails in human services delivery, the consequences, in terms of the reaction of the general public, will not be great enough to result in major political consequences. Although there may be some reaction to their failure, it has not yet been perceived to make a major difference in political terms. However, the perception in relation to construction industry projects of the political risk is that it may be too high because of the visibility of these projects and their impact on the wider community. For example, the proposed motorway through an environmental corridor resulted in a voter backlash that cost a government power (Waterhouse, Brown and Flynn, 2001). In the human service sector, however, despite two major perceived crises in the Queensland human services child welfare sector, the government, although restructured, remained intact (Keast and Waterhouse, forthcoming).

Second, the culture of the construction industry and that of the human service sector is very different. What is meant by culture is the perceived ideals, attitudes and values of those in each of these sectors (Schein, 1984; 1985). The construction industry is seen as being dominated by engineers who are experts in their area and therefore possess informational and expert power. This coupled with the competitive nature of the construction industry leads to more of an acceptance of relational contracts which are seen as setting out acceptable risks and responsibilities. On the other hand, the human service sector is seen to be dominated by welfare professionals whose ideals and attitudes are seen as being protectors of the public good (Hasenfeldt, 1983). The perception is that in this arena the professionals are needed to guide the clients and “hold their hands”. This engenders a paternalistic attitude of telling clients what is best for them that is not conducive to relational contracting. In this environment partnerships based on the authoritative control by these professionals in bureaucratic agencies is seen as a positive aspect rather than a negative one.

Third, construction industry projects are also perceived to be based on the value of profit and self interest. This means that relational contracts are therefore seen as a positive alternative to the litigious conflicts that often result from more conventional types of contracts. This litigious nature is very limited in the human services sector as the nonprofit and community sectors do not have the wherewithal to make litigation profitable for the government. In addition, the view of the public would be big government going after the underdog, rather than litigation of equal parties. On the other hand, nonprofits and community groups not only do not have the wherewithal to sue the government but their success in these types of suits would be limited, at best.

Finally, the private sector will only take on projects that they feel could lead to success, the bolstering of professional reputation and the profit they seek. Therefore the more intractable problems in the human services sector are unlikely to be taken over by the private sector. This means that human services providers are involved with projects that are potentially more prone to failure than those in the construction industry and will therefore require closer monitoring by those in the public sector. This kind of perception

leads to a reliance on more formal contracts, mitigated only by the underlying informal relationships that have always existed.

CONCLUSIONS

This paper has endeavored to answer the question: Why has the construction industry been relatively more successful in introducing relational contracting than the human services sector? The answer, as expected, is a complicated one. The case examples illustrate that there are both similarities and differences between the human service sector and the construction industry in terms of how they undertake procurement of services.

The sectors have both experienced problems of fragmentation and dislocation yet the construction industry has been able to more decisively adopt relational contracting as a mechanism to effectively and efficiently secure outcomes. Part of this can be explained by the fact that within the human services sector the parties have already established prior cooperative working relationships, whereas in the construction arena, the relationship has been inherently competitive. This also forms the basis for the construction industry to try to alleviate the litigious nature of their endeavors, whereas this has not been the case in the human services sector. This means that although relational contracts are more formalized and thus more visible than those in the human services sector which are more informal, interactions in both sectors are based on a similar foundation.

The major difference then, is the use of formalized means to capitalize on relationship building versus informal means. To the extent that the more formal means is seen as ensuring a better understanding by all parties, relational contracting may have some advantages over the more informal methods used. If this is the case, the human services sector might want to move toward trusting these informal relationships more and build on them to be able to develop relational contracts.

Relational contracts have only been used by the construction industry in complex projects where they are seen to be most effective. a similar circumstance exists in the human service sector. Where projects are simply a matter of delivering services, the process is straight forward and can rely on conventional procurement processes and contractual terms. When the projects are complex, involving numerous stakeholders, the human service sector relies on the relationships it has established to move projects forward and sustain them.

Although the construction industry has perceived the need for relational contracts to advance their projects forward, the question remains as to whether this is indeed a better method than the relationships used by the human service sector. It has been found in the construction cases here that partnering arrangements that do not formally obligate the parties to a relationship have not been as successful as alliances. In addition, to the extent that relational contracts better spells out the risks and responsibilities of projects, these can be seen as adding value to a project. However, there is also value in maintaining the relationships already established in the human service sector which in contractual terms more closely resemble partnering approaches where the relationship is less formally

codified. If certain types of relational contracts are indeed proven to be a better mechanism for managing complex issues, then the human service sector might want to take another look at using them. However, it should be understood that this will then run the risk of undermining the long term and powerful professional relationships and networks that currently exist and have proven effective in their own way.

The accountability in relational contracts is outcome focused and specifies shared responsibility. In service agreements, however, the accountability focus is on the discharge of funding and not necessarily on shared outcomes. To the extent that what is wanted in these arrangements is more shared commitment and innovative outcomes, relational contracts may therefore be something that the human service sector might want to take another look at.

There is a need to examine the extent to which relational contracts lead to more effective projects and what types of projects they apply to. Since the human service sector deals with projects that involve more intractable issues and problems, relational contracts will need to focus on very different areas of risk and responsibilities. The ability to use these relational contracts will therefore be more difficult and will require more time for attitudinal and cultural changes to take place within the human service sector. Nevertheless, the construction industry also had to overcome major culturally bound attitudes and values based on a competitive mode and were able to do this. This occurred because the stakes involved in developing innovative solutions were so high that these changes came about. It remains to be seen what, if anything, would be equivalent to move the human service sector to do the same.

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Table 1

Type of Contract	Conventional	Service Agreements	Relational Contracting
Risks Orientation	Low level With contractors and sub-contractors Individual	Mixed Client risk to contractor/provider Public interest risk to government Divided	Shared Contractual apportionment to all parties Joint
Legal Component	Contractual Highly specified Formalized	Legislative Mixed (depending on legislative framework)	Contractual Relational component embedded in legal context
Communication Level	Arms length Infrequent Formalized More impersonal Reduced bandwidth	Structured routinised More frequent Semi-formal Limited bandwidth dependant on relative power	Multi-level More frequent Often informal More personal Increased communication
Optimal Application	Routine Projects Limited Complexity	Routine projects Components easily specified	Non-routine Projects High Complexity
Accountability	Highly prescribed and responsibilities divided Output focused Conflict resolution by litigation	Directed Focus on Discharge of funding not outcomes Conflict resolved through formalized mediation procedures	Highly prescribed and shared Outcome focused Conflict resolution attempted through discourse
Mode of Interactions	Arms Length Legal Adversarial	Arms Length Authority Relationships	Interpersonal linkages Relational
Underpinning Operating framework	Competition Economic	Cooptation Public good	Co-opetition Economic Professional Reputation Public Good