

THE POTENTIAL ADOPTION OF RELATIONAL CONTRACTING
IN LABATAN KERJA RAYA MALAYSIA

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**THE POTENTIAL ADOPTION OF RELATIONAL CONTRACTING
IN JABATAN KERJA RAYA MALAYSIA**

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ABSTRACT

Relational Contracting has been promoted to be the solution to the adversarial nature of construction contracts in many countries. However, the adoption of Relational Contracting has not been apparent in the Malaysian public procurement policies where the use of standard forms of contract is mandatory. Although the standard forms were revised to reflect the current development in the industry, contractual disputes continue to occur in both complex and simple projects. This study evaluates the potential of adopting Relational Contracting as an alternative to the current contractual arrangement in management of complex projects in Jabatan Kerja Raya. The Relational Contracting concept being rationalised for adoption is project alliancing model as practiced in Australia where it has been successful in delivering outstanding performance in both public and private construction projects. The adopted methodology was combination of literature reviews, interviews with expert panels and industry survey among key stakeholders in construction projects. The findings concluded that all key contracting parties in construction projects accept the Relational Contracting concept and recognised its contributions in successful project delivery system. However, adversarial environment is found to exist in all key stakeholders' organisations which could deter implementation of Relational Contracting. Therefore to successfully manage highly complex projects, the respondents concurred with the important contributions of factors broadly categorised as experience in Relational Contracting approaches, joint risk management, equitable risk-reward plans and alignment of project objectives. Three broad strategies were proposed for successful implementation of Relational Contracting in JKR; implementation of top driven initiatives, adoption of alliancing in pilot project and inculcation of Relational Contracting working culture in the industry.

ABSTRAK

Kontrak Perhubungan (*Relational Contracting*) telah dicadangkan sebagai penyelesaian kepada hubungan yang tidak harmoni antara pihak berkontrak di dalam industri pembinaan di banyak negara. Namun demikian, konsep tersebut belum digunakan secara meluas dalam polisi perolehan awam di Malaysia, antara lain disebabkan oleh penggunaan syarat kontrak piawai. Walaupun syarat kontrak piawai telah disemak semula bagi mengambilkira perkembangan semasa di dalam industri pembinaan, pertikaian kontrak masih berterusan. Oleh itu kajian ini dijalankan bagi menilai potensi aplikasi Kontrak Perhubungan sebagai alternatif kepada peraturan kontrak sediaada bagi menguruskan projek kompleks di Jabatan Kerja Raya. Konsep Kontrak Perhubungan yang dicadangkan bagi pemakaian adalah model “*project alliancing*” yang telah berjaya dilaksanakan di dalam projek pembinaan sektor awam dan swasta di Australia. Data kajian telah diperolehi melalui kajian literatur, temubual dengan pengkaji Kontrak Perhubungan dan borang soal selidik yang telah diedarkan kepada organisasi stakeholder utama di dalam projek pembinaan. Hasil kajian mendapati pihak terlibat di dalam kontrak pembinaan sedia menerima konsep Kontrak Perhubungan dan bersetuju ianya penting dalam sistem penyampaian projek. Walaubagaimanapun, didapati situasi tidak harmoni antara pihak berkontrak wujud dalam semua organisasi, dan ini boleh menjadi penghalang pelaksanaan Kontrak Perhubungan. Oleh itu, bagi menjayakan projek yang kompleks, adalah penting faktor berikut wujud dalam persekitaran projek, iaitu: pengalaman pihak terlibat dalam Kontrak Perhubungan, pengurusan risiko secara bersama, pelan perkongsian risiko/keuntungan yang saksama dan kesejajaran objektif projek. Tiga strategi umum dicadangkan bagi kejayaan pelaksanaan Kontrak Perhubungan di Jabatan Kerja Raya iaitu pelaksanaan insentif yang diterajui oleh pengurusan atasan, pendekatan “*alliancing*” dalam projek percubaan dan pembudayaan konsep kolaborasi di dalam industri pembinaan di Malaysia.

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CHAPTER 1

INTRODUCTION

1.1 Introduction

The adversarial nature of construction contracts has been widely discussed since the publications of the Latham and Egan Reports over the last three decades. Since then various approaches had been introduced to address the issue in the form of many novel contractual arrangements such as joint-venture, partnering, collaborations etc collectively known as relational contracting (RC). RC has been publicised to be the solution to the adversarial relationship and was reported to have been successfully implemented in the procurement of both public and private construction projects in the UK, Europe, Australia and Hong Kong. However, RC approach has not been apparent in the Malaysian public procurement policies. One of the reasons for such absence is the mandatory use of standard form of contract for both conventional and design and build projects.

Traditionally construction contract is highly specified which induced the contractors to adopt critical and intolerant attitudes towards clients and consultants; on the other hand, the clients and consultants distrust the contractors (Ling et al, 2006). The authors further suggested that such situations can lead to

self serving behaviours, adversarial relationships and confrontational interactions.

In contrast, Rowlinson and Cheung (2004) proposed that RC is based on recognition of mutual benefits and win-win scenarios through cooperative relationship and efficient communication between parties.

