

THE POTENTIAL ADOPTION OF RELATIONAL CONTRACTING  
IN JABATAN KERJA RAYA MALAYSIA

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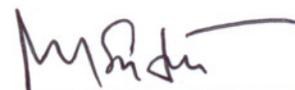
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IN JABATAN KERJA RAYA MALAYSIA**

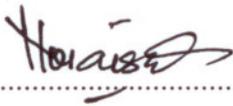
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A capstone project report submitted in partial fulfillment of the  
requirements for the award of the degree of  
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Faculty of Civil Engineering  
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*to my beloved mother*

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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 perlaksanaan 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.

## **1.2 Problem Statement**

The use of standard forms of contract is mandatory in procurement of public development projects regardless of the scope and size of the projects (Ministry of Finance, 2007). Advocates for such practice cited savings in time and costs to negotiate contract terms and ensured consistency and standardised legal protection (Young, 1998). However standard forms of contracts are often criticised as being rigid and having unfair risk allocations among the contracting parties which had caused numerous contractual disputes (Thomson *et al.*, 2000). Although the Malaysian standard forms of contracts have been revised to reflect the current development in the industry, contractual disputes continue to occur even in the less complex projects undertaken by Jabatan Kerja Raya Malaysia (JKR). Consequently, quite often additional work, contractual claims, termination of contracts and arbitrations occurred in JKR's projects.

The potential occurrence of contractual disputes is even higher in managing the construction of complex projects which require balancing the conflicting stakeholders' requirements and interests, overcoming technical and environmental constraints and managing the various project objectives. In such situations, rigid contractual terms and unfair risk allocations often lead to adversarial working environment between the contracting parties.

On the other hand, RC has been widely publicised to be the solution to the adversarial nature of contractual governance (Ross, 2003). According to Sakal (2005), RC encourages project participants to work as an integrated team where all decisions made are “best for project” and the contracting parties win or lose as a group. Highly complex public projects based on RC have been successfully delivered with outstanding achievement of mutually agreed key performance indicators, innovative problem solutions and overall improvement to relationship in the construction industry (Australian Constructors Association, 1999).

JKR has yet to adopt this contractual arrangement in the procurement of public projects. It could be worth considering using customised RC arrangement to manage highly complex projects that have strategic importance and objectives. However, before proposing adoption of RC as an alternative to the current contractual arrangements, it needs to be ascertained that the adoption of RC will not challenge the public sector governance with regards to procurement procedure and contract administration of government funded projects. This is a pertinent issue since suitable guideline is currently not available.

### **1.3 The Aim and Objectives**

The aim of the study is to evaluate the potential of implementing Relational Contracting as an alternative contractual arrangement in the procurement of public works in JKR. The objectives of this study are as follows:

- i. To evaluate the acceptance of common of RC elements in project management by its key stakeholders;

- ii. To analyse the existence of factors that inhibit the adoption of RC;
- iii. To determine the factors that facilitate the adoption of RC

#### **1.4 Scope of Study**

The study is confined to contract governance in projects undertaken by PWD using standard forms of contract either the conventional (PWD 203/203A rev. 10/83 and PWD 203/203A rev. 2007) or design and construct (DB 2002 and DB 2007). The public sector governance being examined is confined to those regarding development project procurement and contract administration.

The concept of RC to be rationalized for adoption in JKR projects is based on project alliancing model practiced in Australia where this strategy is reported to have successfully implemented in public and private sectors.

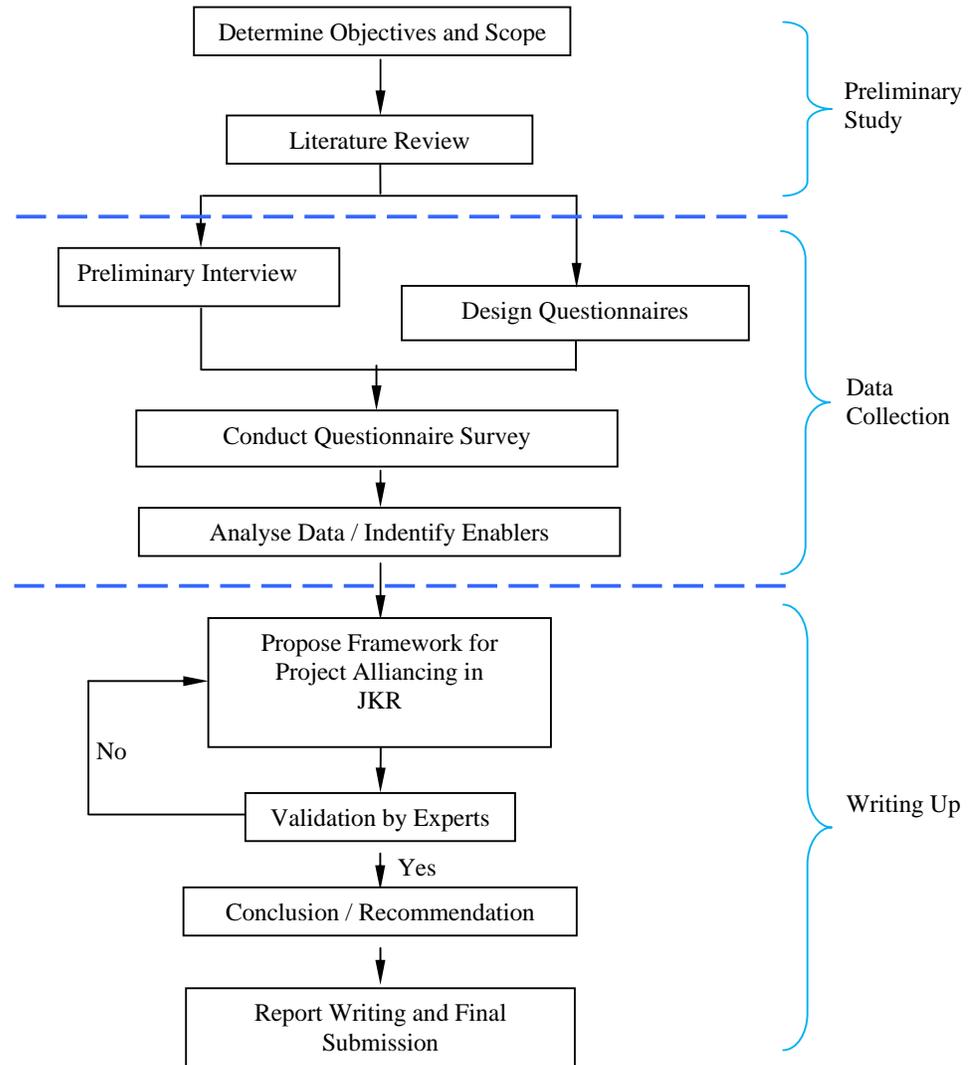
#### **1.5 BRIEF RESEARCH METHODOLOGY**

The summary of the overall study aim, objectives and adopted methodologies to achieve the objectives in this study is as shown in Table 1.1.

**Table 1.1** Summary of the overall study aim, objectives and adopted methodologies

<u>AIM :</u>		
To evaluate the potential of implementing Relational Contracting as an alternative contractual arrangement in the procurement of public works in JKR.		
OBJECTIVES	TASKS	METHODOLOGY
i. to evaluate the acceptance of common of RC elements in project management by its key stakeholders	<ul style="list-style-type: none"> <li>• Review history, concept and state-of-the-art in RC</li> <li>• Study current application of RC within the industry in Australia and other countries</li> </ul>	<ul style="list-style-type: none"> <li>• Literature review</li> <li>• Semi-structured interviews with expert panel</li> <li>• Questionnaire survey</li> </ul>
ii. to analyse the existence of factors that inhibit the adoption of RC	<ul style="list-style-type: none"> <li>• Evaluate current environment of managing projects within the industry</li> </ul>	<ul style="list-style-type: none"> <li>• Literature review</li> <li>• Questionnaire survey</li> </ul>
iii. to determine the factors that facilitate the adoption of RC	<ul style="list-style-type: none"> <li>• Establish the main factors that facilitate implementation of RC</li> <li>• Establish suitable approach to implement RC</li> </ul>	<ul style="list-style-type: none"> <li>• Literature review</li> <li>• Semi-structured interviews with expert panel</li> <li>• Questionnaire survey</li> </ul>
	<ul style="list-style-type: none"> <li>• Result analysis and dissemination</li> </ul>	

The study will be carried out in three phases to execute the different tasks as shown in Figure 1.1:



**Figure 1.1** : Brief research methodology