

Termination of Construction Works Contract (Case Study on Polytechnics at The Ministry of Finance in 2021)

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ARTICLE INFORMATION	ABSTRACT
Received: February 2024 Revised: February 2024 Accepted: March 2024 <i>Keywords: Contract Terminations; Construction Project; Government Procurement; Tender.</i>	This research aims to identify the causes of contract termination in construction projects within government agencies involved in the procurement of goods and government services. Government procurement of goods and services has its own regulations where changes in regulations and environmental conditions can result in changes in the management of construction work contract implementation. This study is a qualitative-research with a case study on a simple construction project at a polytechnic under the Ministry of Finance. The research uses primary data from interviews and job documentation. Theme analysis is employed in this study. The results indicate that the theme causing contract termination is costs factor that related to mismanagement of cash flow practices. The ease of doing business for suppliers in participating in tenders can result in them taking on more projects than their financial capacity allows. For regulators, this research can serve as preliminary information for the need to strengthen regulations. For participants in government procurement of goods and services, this study provides insights into risk mitigation for detecting contract terminations.

INTRODUCTION

The government budget is implemented, among other things, through government procurement of goods and services (PBJ). In Indonesia, the procurement of goods and services is regulated by presidential regulations (President of the Republic of Indonesia, 2021). Among the objectives of PBJ in these regulations are the enhancement of the role of business actors in PBJ, economic equality, and the attainment of value for money from goods and services received by the government. The PBJ regulations have been updated several times to improve the achievement of PBJ objectives (President of the Republic of Indonesia, 2021). Supporting technical regulations have also been updated by reducing requirements for providers, expanding procurement packages for small businesses, and making other changes (Government Goods/Services Procurement Policy Agency, 2021).

Despite continuous improvement of regulation, the objectives of PBJ still carry the risk of not being achieved. The risk of corruption persists even though PBJ has adopted an electronic system (Irwansyah et al., 2022). Risks related to human resource capacity also remain and need continuous improvement (Ariesta, 2021; Hikmah & Irjayanti, 2023). Additionally, one constant risk in any project is the failure of

providers to fulfill agreed-upon procurement contracts. Failure to complete work in PBJ can disrupt government services to the public, given that government units intend to use the results of such work in service delivery.

One common failure occurs in construction projects. Generally, construction procurement is more complex compared to the procurement of goods or consulting services as it requires materials, labor, and effective work control capabilities. According to the theory of production factors, producing a product requires at least raw materials (material), labor (man), implementation method (method), and tools (machine) (Handyaningrat, 2000). In addition to production factors, as a project, construction work will always face project constraints such as time, cost, and scope of work (Project Management Institute, 2017).

In 2021, there were sixteen construction project packages in PBJ that were not completed by providers in the Ministry of Finance, including construction work at a polytechnic, the subject of this study. This number is significantly higher than the three failed packages in 2020. The total contract value for unfinished work in 2021 exceeded 100 billion rupiah. Considering the high number of failures, understanding the reasons for these failures can serve as risk mitigation for similar projects in the following years.

The causes of construction work completion failures have been studied before. Research from developing countries shows that the causes of failure not only come from internal providers but can also arise from the environmental conditions in which the work is carried out (Muhammed et al., 2022). Although extensively discussed in other countries (Damoah & Akwei, 2017; Egwim et al., 2021; Eja & Ramegowda, 2020), research on the failure of work completion in Indonesia is still difficult to find, especially regarding construction work within the scope of government procurement of goods and services. The high number of work completion failures in the Ministry of Finance has the potential to generate more comprehensive research. Because it occurred in one ministry, the data on failed jobs are expected to be more easily obtained.

This research is aimed at understanding the causes of work completion failures leading to contract termination at polytechnics in the Ministry of Finance. The work involved is simple construction, meaning it does not require complex technical specifications and is considered to have low failure risk. This makes it interesting to analyze how low-risk work can still experience failure.

This research uses interviews with procurement stakeholders as a data source. The identified themes can serve as a starting point for discussion and improvement. The pandemic conditions and changes in PBJ regulations form the external conditions underlying the studied cases. The research results are expected to contribute knowledge and be useful for government procurement stakeholders in achieving PBJ objectives. For regulators, this research can also provide input and feedback on current procurement policies.

LITERATURE REVIEW

Triple Constraint

Obstacles in projects are divided into 3, namely scope, time and cost, which are generally known as "Triple Constraints" (Project Management Institute, 2017). The scope is used to determine the qualitative and quantitative elements of a job. Typically, the scope of work is broken down into lower, logical levels using a job characterization structure strategy.

The scope of work evaluated has three segments: Quality, specifications, and standards to be achieved (Newell & Grashina, 2003). The second constraint factor is cost. Costs in Triple Constraint can be defined as the costs required to complete a project or project budget. Project costs refer to the assets that must be implemented or specified for a venture to achieve the agreed scope of work. The third obstacle is time. Time is described as the estimated actual duration to carry out and complete the scope of work. There are two important elements of time, namely scheduling and schedule control (Project Management Institute, 2017). The project management triangle serves as a miniature to outline the impact of three obstacles on the progress of a work project. The triangle reflects the way the Triple Constraint is linked and sacrificed-one side of the triangle cannot be replaced without affecting the other side. Task quality is determined by the fulfillment of each of the 3 factors and is influenced by the even distribution of the 3 constraint elements

(Project Management Institute, 2017). Thus, Triple Constraint is defined as a project management concept that reflects a structure for assessing requirements in a job (Egeland, 2011).

Contingency Theory

Scott (1981) stated that contingency theory remains the dominant approach to organizational design as the most widely used contemporary theoretical approach to studying organizations. Meanwhile, in strategic management, the general axiom related to contingency theory states that there is no strategy that is universally superior, regardless of environmental or company conditions (Venkatraman, 1989).

In the construction industry, contingency theory is influenced by the pace of technological change (Staynov, S & Baumgarter, 1986), uncertain financial markets (Nam & Tatum, 1988), and changes in client demands following variations in tastes, aspirations and purchasing power. Dansoh (2005) also discusses that an unstable business environment is characterized by rapid market changes where funding sources shift, government regulations increase, business cycles change, competition becomes tighter and inflation occurs. Because of all these changes, managing construction has become more difficult (Betts & Ofori, 1992). Construction companies tend to neglect strategic planning, thereby suffering during economic crises or political instability (Langford et al., 1993). Construction companies usually plan more for the short term than the long term or prioritize maximum profit as the main goal (Abu Bakar, 1993).

Procurement of Government Goods and Services

Procurement of government goods and services is an activity to obtain goods/services that the government needs, both for operational activities and investment. The scope of procurement of government goods and services is from identification of needs to handover of procurement results. This procurement is carried out by government work units using budgets sourced from the APBN/D (President of the Republic of Indonesia, 2018). Considering that PBJ funds come from the government, the government hopes that PBJ can be an effort to equalize the economy, increase the role of small businesses, and get the best value for money from the services obtained. Furthermore, value for money is defined as getting it on time, getting services at the best price, and if it is obtained through a provider, it is expected to come from a competent provider or in accordance with the qualifications held.

For procurement of goods and services involving providers, the procurement of goods and services is divided into implementation stages (Government Goods/Services Procurement Policy Institute, 2021). PBJ carried out with providers consists of the preparation stages for selecting a provider, implementing the selection of providers, implementing the contract, monitoring and controlling the contract, and handing over the results of the work. These stages are not only carried out by the Provider but also involve the Budget User Authority (KPA), Commitment Making Officer (PPK), and the selection working group (Pokja).

The implementation of PBJ in Indonesia has been assisted by the application of electronic information technology (e-procurement). Several studies conclude that e-procurement can increase the reliability of PBJ implementation (Ariesta, 2021; Habibi & Untari, 2018; Irwansyah et al., 2022), although several things such as training for actors, socialization of regulations, and evaluation still need to be improved (Ariesta, 2021; Hikmah & Irjayanti, 2023).

Even though it has been implemented using e-procurement, government procurement of goods and services still faces the risk of fraud. Fraud in the procurement of goods and services is ranked second in the list of cases examined by the Corruption Eradication Commission (KPK) (Kamal & Tohom, 2019). Kamal (2019), who mapped PBJ risks and their impact on value for money, concluded that the biggest risk is at the planning stage where the planning results do not match real needs. Meanwhile, Sukrawan & Winarno (2013) also identified risks and stated that the risk of protracted processing times, and the risk of provider staff qualifications are risks that have quite high probability and impact. Apart from that, Alfian (2015), also stated that there is still a risk of the contract being sold to another party, all work being transferred to another provider, as well as the risk of HPS not being prepared based on valid data.

Several studies analyze the use of probity audits as a tool to increase effectiveness and reduce the risk of government PBJ (Mulyono & Setyawan, 2018; Ramadhan & Arifin, 2019). However, in some cases probity audits have not been able to run optimally and experience many obstacles and limitations

(Ramadhan & Arifin, 2019). So that PBJ can achieve the desired goals, research by Sulistyorini & Urumsah (2021) proposes a conceptual model to prevent fraud by strengthening the internal control system, quality of human resources, ethics and organizational culture.

Causes of project failure

Construction project failures have been studied before. Based on the literature that has been collected, the causes of project failure are as presented in Table 1.

Table 1. Literature and Causes of Construction Project Failure

Author	Cause
(Eja & Ramegowda, 2020)	Poor financial capabilities Inaccurate costs and corruption Incompetence and lack of knowledge Poor planning and estimation Poor communication Poor contracting and contractor practices Frequent design scope changes and errors Socio-cultural and political intervention Bad leadership and corruption
(Isensi, 2006)	Quality (Lack of experienced contractors) Time (underestimating project duration) Cost related (inadequate project budget)
(Egwim dkk., 2021)	Project quality control, Work program/project schedule, Contractor's financial difficulties, political interference, Location conditions Price fluctuations
(Ikechukwu & Ozuzu, 2021)	Poor project implementation Undesirable government political practices and lack of supporters
(Abdulkadir S. dkk., 2020)	The main factor that greatly influences construction costs is the stability of market conditions Fluctuations in building materials and labor prices Funding problems
(Cross & Abbas, 2019)	Corruption and bureaucracy, Absence of proper project planning Poor communication
(Alao & Jagboro, 2017)	Delay of payment Mismanagement of funds Inadequate budget provision Insufficient finances Inflation and contractor bankruptcy
(Mac-Barango, 2017)	Inadequacy of planning Variations in project scope Wrong design

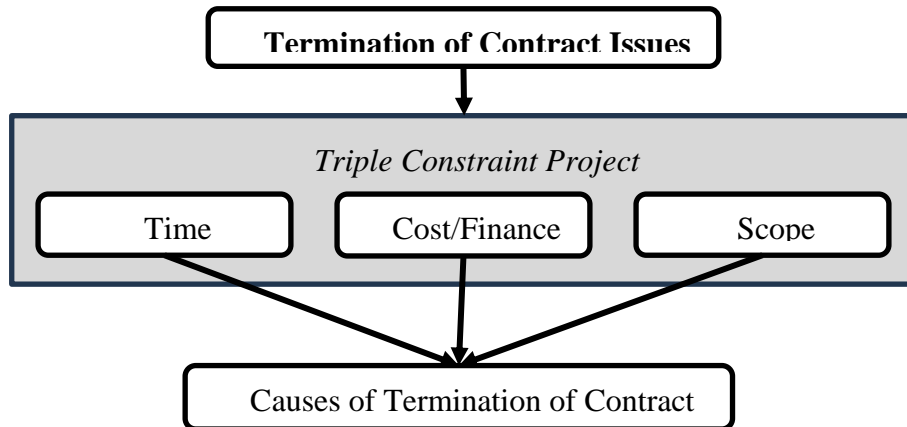
Author	Cause
(Fatayer dkk., 2022)	Late payments and incompetence Awarding a contract to the lowest bidder with a low profit margin Due to strong competition among contractors
(Khudhaire & Naji, 2021)	Time Finance Resource
(Albtoush dkk., 2022)	Financial difficulties Material problem Design issues Additional work
(Yap dkk., 2021)	Lack of proper planning and scheduling Many clients change orders and Lack of competence in site supervision
(Thandi, 2020)	Corruption Delay in payment of project funds Procurement delays Improper risk management Poor work ethic
(Singh dkk., 2018)	Lack of materials on site Unexpected location conditions Challenging weather conditions Insufficient modern equipment
(Damoah & Akwei, 2017)	Time Cost Delivery Stakeholder satisfaction Contribution to national development
(Shahhossein dkk., 2018)	Lack of finances Weaknesses of the bidding process
(Nzekwe dkk., 2015)	Increase in prices of starting materials Poor Project Implementation Planning Project Scope Variations Awarding of contracts without reference to the availability of funds Political Pressure
(Shahhossein dkk., 2017)	Financial Problem Weaknesses of the bidding process

Research Framework

Job triple constraints, based on previous research, are the dominant factors that cause job failure. Even though it is found in almost every job failure, contingency theory states that every job has its own

contingencies. Previous research in Table 2.1 also shows that each study has unique factors that cause failure. Based on this, the research framework in this paper is as follows:

Figure 1. Research Framework



This section typically has the following sub-sections: Sampling (a description of the target population, the research context, and units of analysis; the sample; and respondents' profiles); data collection; and measures (or alternatively, measurements).

RESEARCH METHODS

This research uses a qualitative method with a case study approach. This research attempts to answer questions related to the causes of PBJ work failure. The case study used is the case of failed construction work at a polytechnic in the Ministry of Finance for the 2021 fiscal year. Contract terminations that occurred in 2021 at the Ministry of Finance increased, both in quantity and value of work compared to the previous year. The failed construction work was a simple construction work that did not require complicated technical specifications and had a low risk of failure.

This research uses primary data and secondary data. The research's primary data comes from interviews with respondents. Secondary data comes from announcements in digital media, public data, and other library data related to the work that is the object of research. The research steps are as Figure 2:

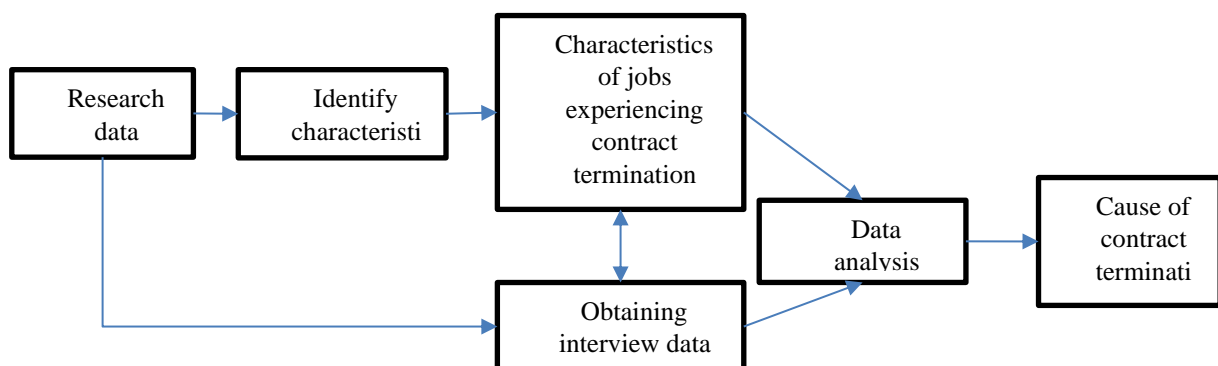


Figure 2. Research Steps

Identification of job characteristics is carried out using the following data:

- Tender data
 - Tender announcement data
- Tender document
 - List of providers who have experienced contract termination
 - Terms of Reference and Job Technical Specifications
 - General Conditions of Contract (SSUK)
 - Special Conditions of Contract (SSKK)
 - Fill in the winning bid document
 - Draft work contract
- Provider History
 - Data from "Check LPSE"

Tender data is obtained from the LKPP Application Programming Interface (API) which is available at <https://inaproc.id/satudata>. This data is open to the public with an independent data collection process. The tender document is a document that is not available to the public. This research obtained these documents from the tender data archives conducted at the Ministry of Finance. Provider historical data is also available in LKPP. However, to shorten the retrieval process, this research uses data from third-party applications. The data obtained was then validated manually.

Job characteristics resulting from data analysis are then confirmed in the interview process. Apart from that, interviews were also conducted to find out the cause of contract termination. The interview informants in this research consisted of:

Table 2. List of Research Informants

No	Informan	Role	Amount
1.	Commitment Making Official (PPK)	Signing the contract	1
2.	Staf PPK	staff and person in charge of work	2
3.	Chair of the Working Group (Pokja) for Provider Selection	Organizer of provider selection through tender	1
4.	Head of Procurement Management Section, State Property and Procurement Management Bureau, Ministry of Finance	Head of UPPBJ Ministry of Finance	1
5.	Provider	Executor of work	1

This research interviewed several informants as shown in Table 2. Interviews were conducted on several occasions. The first interview was conducted with PPK 1 staff. Subsequent interviews were conducted with PPK 1 and PPK staff to deepen the information. The next interview was with the selection working group and Head of the Procurement Management Section, State Property and Procurement Management Bureau, Ministry of Finance together. The final interview was conducted with the Provider together with PPK 2 Staff. The provider who was the informant in this research was not a contracted provider who experienced a contract termination. Contracted providers cannot be contacted to serve as informants. In the contract termination documentation, the cause of the provider experiencing contract termination is not completing in accordance with the terms of the contract. Thus, this research uses information from other providers to dig deeper into the reasons why a provider fails to complete contractual obligations and experiences contract termination.

This research uses thematic analysis, namely data analysis that collects patterns of meaning in the data to get an overview of themes. The themes found were then grouped and the relationships between themes analyzed to answer the causes of contract termination

RESULT AND DISCUSSION

Job characteristics

ABC Polytechnic is a polytechnic within the Ministry of Finance. This polytechnic provides education for employees and prospective employees of the Ministry of Finance. Teaching and learning activities are carried out in the campus area located in South Tangerang City, Banten Province. Lecture activities are held in several separate buildings. There is a corridor that connects the buildings as a means of pedestrian mobilization. Based on the needs analysis, the approximately 250 meter long corridor requires roof repairs.

The lobby floor uses paving material and the roof is polycarbonate. The condition of the hallways, especially the hallway that connects the C-D-P building, requires repairs because the color of the polycarbonate roof has faded, giving the impression of being dull and unkempt, there are several points where the roof has become porous, the roof material needs to be modernized/replaced with a roof material that can absorb heat/is less noisy when it rains, and it is necessary to organize the cables that pass under the roof so that they are more neatly arranged. Based on an analysis of the work details in the contract, there is a replacement of the floor with a patterned concrete floor. The roofing material was replaced with Onduline material. Meanwhile, for the iron frame, only the porous iron is replaced and then continued with finishing work in the form of painting. The work completion time given to the provider based on the initial plan is 90 calendar days. The contract ceiling provided for this work is IDR 950,000,000.

The work tender was held in October 2021. The tender was attended by 132 participants. The tender used the lowest price assessment and was won by the provider with a contract value of 92.92% of the HPS value. Based on the work contract, there is a down payment provided by PPK of 20% of the contract value with the condition of providing a guarantee for the down payment from a commercial bank. In the contract it is also agreed that payment for work performance will be made based on work progress. When work progress reaches 50%, payment is made of 50% of the contract value minus 50% installments of the down payment. When the work is 100% complete, payment is made of 50% of the contract value minus 50% installments of the Maintenance Guarantee down payment of 5% (five percent) of the Contract Price issued by the Commercial Bank.

Based on the conditions above, this roof repair work is not complex work, does not require special materials or specialist skills. The work contract value is also relatively large (92.92%) from HPS. Providers are still given a down payment facility of 50% of the contract value. The time provided to complete the work is also relatively standard. In general, the risk of this job is low. There are no signs that providers will experience contract breaks. Conditions where work is not considered difficult and low risk may be found in many other government work units, so it is interesting to analyze how simple work can lead to contract termination.

Causes of Termination of Contract

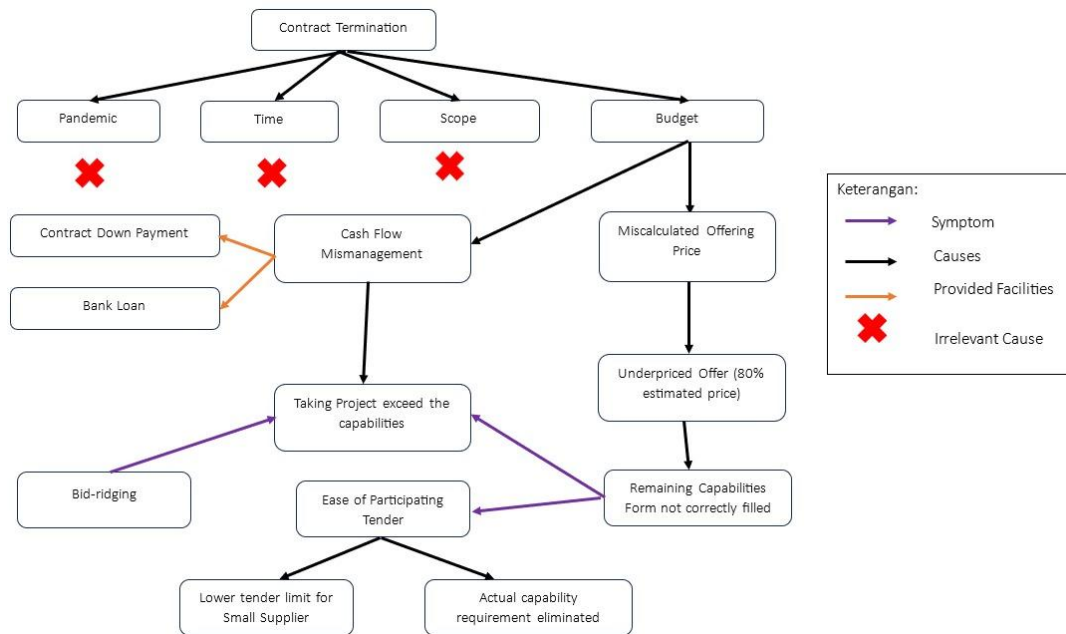


Figure 3. Themes of Findings

Based on the thematic analysis carried out, several themes found are as shown in Figure 3. Even though the picture contains a description of the causes, the relationship between the themes is not really rigid. Like the triple constraint of work, each theme influences each other. Cause analysis based on these themes is described in this subsection.

Pandemic State

The cases in this research were carried out while the pandemic was ongoing. In 2021 the government also issued Presidential Regulation Number 12 of 2021 concerning Amendments to Presidential Regulation Number 16 of 2018 concerning Procurement of Government Goods/Services. Based on the LKPP portal, this regulation has the spirit of providing convenience to small business actors and is expected to be able to accelerate economic recovery which is being affected by the Covid-19 pandemic. The LKPP regulation as a derivative of Presidential Decree 12 of 2021 embodies these various conveniences at a technical level.

In a pandemic situation, the Indonesian government issued a policy not to prohibit construction work activities but must be accompanied by the implementation of adequate health protocols. The pandemic conditions make it difficult for providers to implement the health protocols. Workers do not usually wear masks when working. The government which prohibits mass concentration is also an obstacle. The work location was closed by government officials during the pandemic.

“The pandemic has affected us, sir. I have a job in 2021. Job was in 2020 but it was postponed until 2021. According to the regional government, gatherings of 2-3 people are not allowed. Meanwhile, workers with more than 2-3 people have to carry out an antigen swap, while the workers don't necessarily want to. "Then we were obliged to wear gloves, masks, even though

the workers didn't want to... How many times did we violate it and then the authorities dispersed it."

Even though the pandemic has hampered work on the labor side, the pandemic has not had much of an impact on the financial side. Providers can still use bank funding or debt from material suppliers. Providers can still use “tempo” payments for materials they bring in from suppliers. The provision of this facility is more influenced by good relationships with suppliers and the provider's good name in the eyes of material suppliers. Not all providers are provided with debt facilities from their suppliers. It is not the pandemic that causes this but rather the supplier's trust in the provider itself. This was revealed by the Provider informant.

"You can still borrow money...(but) it depends on how honest the person (provider) is."

During the pandemic, the government actually tried to improve the economy. Including relaxing provider requirements in procuring goods and services. The impact of the relaxation of tender requirements was felt clearly by the Working Group, including the participation of providers in tenders without considering capital capabilities, the SKA lending and borrowing phenomenon and the relaxation of the clarification process. This, as stated by Informant 1 of the Working Group, stated the following:

"Now it seems more crowded because since the pandemic, it's been difficult to find projects, right? So people are crazier.... In fact, this relaxation makes the contractors run wild... The intention is good so that the tender process does not complicate administration... since the pandemic, everything has changed. Previously, clarification had to be done in the field, after that (it became) online... (people and PU regulations state) if people want to take part in the tender, don't make it difficult. But in the end, people who don't have capital can take part in the tender, because the financial requirements are removed. Then the experts have an SKA (Certificate of Expertise). (for example) I had SKA, then borrowed it, whether with my knowledge or not. (When someone asks) why isn't the working group checking it? People weren't told to do it. In the regulations it is not mandatory. Later, the PPK will check when you want to contract. "So many of the requirements are reduced so that the one who wins the tender is not the best."

The time given to complete the work

Work time is one of the three constraints in project management. So that providers can anticipate, information on work completion times is disclosed in the tender announcement. The amount of time provided for completing the work is determined by the PPK along with determining the work budget and technical specifications of the desired output. The work implementation time is formulated by the work planning consultant employed by PPK. Job planners are required to have expertise proven by relevant certification.

Based on the study conducted, work time is not the cause of work failure or contract termination as stated by the Provider Informant as follows:

"The average work time is in accordance (with the time to complete) because the planner has taken it into account. He works inside the building or outside the building. Where is the location. "If it's on the 1st floor, indoors, or on the 2nd floor. There are also items from outside,

for example, we have to pivot first...but the planner has estimated how many days it will arrive at the location so the time has been calculated by the planner."

Working Group 1 informant also stated that the availability of time to complete the work was not a cause for terminating the contract. The provider may still choose to complete the work beyond the allotted time with the consequence of paying a fine. Providers can accelerate work if they have sufficient capital. Accelerating work requires additional costs to pay for worker overtime.

The provider informant also strengthened it by stating that there was also a subcontracting option. Subcontracting to applicators/specialists can save time considering that applicators/specialists will be motivated to work more quickly to complete the work so they can immediately receive payment from the provider.

"Not everything is subcontracted. Be picky too. The consideration is time. If people work daily, 8-4. If people work on a contract basis, they can start at 7-6. It can be completed quickly, you can receive the money more quickly... (regarding payment) for example, if he makes a contract of 100 million, he becomes an opnam. If he completes 30%, we pay 28%, if he completes 50%, we pay 47%. A few percent later"

Scope and complexity of work

The job scope constraints mentioned in the triple constraint were also confirmed by the informants in this study. The informants agreed, saying that the scope and complexity of the work were not real factors that caused the work to fail. PPK 1 informant stated:

"In 2020 and 2021 I was confused. The work that was thought to be complicated was actually completed. In 2020 there is a P building which we think is complicated and painted. In 2021, we will install the roof and ceiling of Building G, which we consider complicated, as well as the light corridor. Something as easy as painting and installing a hallway turns out not to be finished."

Provider informants also revealed that the scope of work had been calculated beforehand. Even for work that requires importing materials, this is known beforehand. The work time provided also accommodates possible material delays. The complexity of the work can be anticipated as long as the information is contained in the tender announcement.

Finance and ease of participating in tenders

The dominant theme found in this research is financial problems. Financial requirements in 2021 change from previous years. The government provides more space for small business actors by limiting packages worth less than IDR 15 billion to providers with small business qualifications.

The dominant financial condition was said to be the cause of the contract termination. Providers who participate in the tender are business actors who have been verified as having business capital. Almost all jobs that involve contract termination require the provider to have experience over a certain period of time. Providers who win the tender are of course providers who have fulfilled these requirements or in other words they have financial resources. However, they still failed to complete the work and had their contracts terminated. This research identifies the reasons why providers can get caught up in financial problems.

Error determining the bid price

HPS is an estimate of the costs required to complete the work. The HPS is prepared using the expertise of planning consultants and determined by the PPK. This means that the HPS value should be the fair value of completed work. In general, the upper limit of the bid value is the HPS value of the work. The contract value in the tender is the bid value of the winning bidder. In the lowest price assessment method, the winner of the tender selected is the provider who offers the lowest price. Based on LKPP regulations, the profit margin of the work implementer can be included in the HPS in the amount of 5% -10% so that when the provider bids 80% of the HPS, there is a question of where the provider's profit comes from.

According to provider informants, the low bid price could occur due to an error in calculating the bid price. The provider is of the opinion that the error occurred due to the planner's error in compiling the HPS.

"On average, planners now use online prices. He checked the online shop, but at the time of the implementation, it was true that the online shop didn't sell that much, it wasn't true either. When we check whether the online shop has the goods or not, the goods are not there.... The contractor also made a mistake in bidding. The price has been made low, so he bids low. So, instead of losing millions, it would be better to be blacklisted for a year. (He realized) at the time of implementation."

However, in the next subchapter we will explain the phenomenon of provider behavior that provides low bid prices solely to win the tender so that the bid given is not necessarily rational for carrying out the work.

Based on article 26 of Presidential Regulation Number 12 of 2021, HPS is calculated using expertise and using reliable data. This means that when planners use market data from online prices, these prices can be used as a basis. In this case, providers should be more careful in preparing offers. Providers must anticipate changes in market prices and material availability.

According to LKPP regulations regarding procurement through providers, the procurement Working Group has time to review procurement documents before announcing them to the public. This review is at least carried out on technical specifications, HPS, contract design and budget availability. The Working

Group can request revisions to documents in the PPK when there is a possibility that the information is unclear and causes conflict with the provider, or the possibility that the HPS does not comply with the required technical specifications. From the cases that were the object of research, there was no indication that the HPS was prepared using unrealistic prices.

At the Ministry of Finance the review stages have been carried out optimally by the working group. However, it does not rule out the possibility of variations in the results of the review from each working group considering that there are many Working Group teams in the UKPBJ Ministry of Finance and the complexity between one work package and another. There is no certainty that the results of the review will eliminate all risks of an inaccurate HPS.

"(The results of the review) are not all of them, sometimes we get a lot of (good review results, like yesterday (notes from the working group). That's good. Other working groups might not have as many findings. The more detailed the review, the better."

Providers take work beyond their financial capabilities

The results of this research found indications that providers won work packages that exceeded their financial capabilities. PPK informants provide information:

"What happened to us was, the provider won on 2 or 3 jobs, then the money was invested in those places, then the billing terms turned out not to be according to the estimated (schedule), in the end the capital was stuck there (no capital could be disbursed while the other places need to finally terminate the contract)"

Staff Informants also stated:

"he (the provider) won in xxx and yyy. There is information that he (on another project he is working on) is not being paid because there is still something that needs to be completed."

Providers who experienced contract termination at the case study object carried out at least 2 jobs at the same time. This condition may not have occurred beforehand by the provider. They tend to chase winning packages by entering as many bids as possible. Furthermore, this provider actually won on many packages at the same time.

In the procurement document which is a tender administration requirement, there is a field that asks how much work the provider is carrying out when he submits the bid. This form is self-assessment. However, not all providers pay attention. Providers also cannot estimate how many packages will be won from the number of offers given.

The provider may provide incorrect information in the form. The number of packages entered in the offer document will be verified by the selection working group when the provider enters the clarification stage. The Working Group will send confirmation to other government work units that currently have work contracts with the provider. However, when the provider fills in "none" then the Working Group cannot confirm it with any party. This means that when the form is filled with incorrect information, it is not easy for the Working Group to clarify it.

When the working group finds incorrect information in the procurement documents, the working group has grounds to cancel the provider's offer. Circumstances where the working group finds that the selected prospective provider filled in incorrect information is rare considering that the working group does not have information on which provider is currently working on the work (winning the package).

Procurement data using the tender method in Indonesia is centralized in LKPP. However, not all information can be accessed by the procurement working group. One of this information is the amount of work being carried out by the provider at the time the document clarification is carried out before the provider is determined as the winner of the tender. When the research was carried out, information on the amount of work carried out by the provider was obtained from third party applications. The application is Android based and paid. Information from the Working Group regarding the need for information on the number of packages being worked on by potential winners is as follows:

“(information that the potential winner had won another work package) only emerged after we protested. It's called SKP (Remaining Package Capability) which just appeared in SIKAP (Provider Performance Information System). That's new this year. Previously, use your own application. (sometimes) manual. That's not valid either. Use invalid third party applications. The level of trust is only a third party. The truth is, he took it from somewhere else. That is the working group's effort in exploring the data. That's asymmetric information, right? Who knows his data. We don't know and we are given credit for our ignorance.”

Information on the number of packages being worked on should be provided by LKPP as the data owner. To be used by the working group, the information must be official information and can be accounted for. This information is relevant for the Working Group considering that providers are supposed to provide correct information in the Tender Documents including information on the Remaining Package Capabilities they have when submitting a bid. This information is also relevant for the PPK considering that the burden of contract control is on the PPK. Contract risk mitigation can be carried out by PPK earlier when the winning provider is carrying out work in another work unit.

Ease of participating in tenders

Presidential Regulation concerning Number 12 of 2021 (Perpres 12) is an amendment to presidential regulation Number 18 of 2018. Presidential Regulation 12 is an embodiment of the government's efforts to support ease of doing business. Presidential Decree 12 reduces several provider requirements so that it is easier for them to participate in tenders, increases the value limit for work specifically for small business actors, and explicitly states the domestic components that must be met by a work package.

One of the requirements removed in Presidential Decree 12 is the Real Capability Requirement (SKN) for small business actors. The real capability requirement is a financial requirement where the provider is required to have working capital that is greater than the work packages he is working on at one time. By eliminating this condition, the working group does not receive information on how much capital he has and whether his capital is sufficient to carry out the work he is bidding on.

The loss of real ability requirements is accompanied by an increase in the value of work for small businesses. Jobs worth less than fifteen billion rupiah are reserved for small businesses only. Non-small businesses cannot participate in the tender. This condition is risky for PPK as the job owner.

“I (PPK) don't believe that small businesses are capable of doing work above 5M. Construction work takes at most 90 days to 120 days or a maximum of 5 months. That's 1-2M a month. For small businesses it seems like it's tough. Once you miss, it's over (the work isn't finished).”

Working Group informants also provided information regarding the impact of reducing these requirements.

“These requirements come from Sono (LKPP and PUPR). We (Pokja) cannot change it. If it's a small business, the ceiling is 15 billion, that's ridiculous. That was the first thing I protested when it appeared. That's risky. Small companies with big ceilings. SKN is gone again. In fact, if we look at Presidential Decree 80 2003, there are audited financial reports. That's international best practice, sir. Because of capital expenditure, you have to have a lot of money. Displays accounts for the last 3 months. If we use that condition we will be complained about. Discriminatory. How can such a condition be removed, LKPP says there is already a down payment. No need for that. (But) that greedy provider. He got an advance to use for a neighboring project. (by increasing 15 M without SKN) that's crazy. And we have protested. “In the revision of this presidential regulation, we want to make it clustered, although it remains 15 M. 0-2.5 M (the conditions are like this) and so on.”

The phenomenon of providers winning many packages can also be triggered by the ease with which providers participate in tenders. Based on LKPP regulations, there are tender requirements that are no longer permitted to be included by PPK, such as letters of support, ISO requirements and others. These requirements are felt to be an obstacle for business actors to enter tenders. By reducing the conditions, the

tender becomes busy with providers. However, it cannot be filtered from the start, which providers really have the capability and which providers just want to win.

Based on information from POKJA informants, this phenomenon occurred in other ministries:

"Now it seems more crowded because since the pandemic, it's been difficult to find projects, right? So people are crazier.... The phenomenon of winning was the first thing that was crazy. "As long as he wins he enters, as long as he wins he borrows the flag, the important thing is to win first, just use (SKA) this one and then replace it."

The 80% offer phenomenon was also confirmed to the provider. Provider informants stated the following:

"80% of the time, people are looking to win first. If 79% have to do an analysis of all jobs, the source of the price, the wages cannot be lower than DKI, wow, what a headache. So look for 80% first, look for a safe chance of winning.... Usually (at the beginning of the year) the important thing is to win first.... If in the middle of 7-8 months you haven't received a contract, that's a headache... (the important thing is to win) You don't need to make a profit, the important thing is to break even. (Financing) from banks can come out."

When a provider bids below 80%, there are additional procedures that the working group and provider must carry out. The Working Group evaluates whether the offer submitted is a reasonable (rational) offer. Providers are required to provide price analysis of the offers they submit. This analysis contains the unit price and volume of each work item. The Working Group will then explore the fairness of each item both on the price side and on the volume side. This of course means additional costs for the working group and providers. Most offers below 80% were canceled because the working group found unreasonable items in the offer. However, this is not easy considering the limited time and energy resources that the Working Group has.

The ease of entering tenders is still made worse by the phenomenon of borrowing flags. Borrowing a flag is a term that is often used to describe a condition where a business actor uses a company that is not his own to participate in a tender. Working Group informants provided the following information:

"... as long as he wins he borrows the flag... there is a change of parties, yes, the tender working group, the one with the PPK contract. There is a transition period from working group to PPK. We have often been protested by the PPK. The Working Group is crazy. The winning tender is like this. We've been bullied like that. (but) this is beyond our control. He sold it after winning. We don't know if he borrowed the flag. "On paper, everyone is the Director."

The phenomenon of borrowing flags is nothing new. However, to date no policy formulation has been found that can eliminate flag borrowing or even detect this incident. Information from Provider informants is as follows

"Starting from 2020, the working group recommends that companies borrowed from can not participate in tenders. but even now the working group doesn't know whether the company was borrowed or not. I don't know who has it or not, I don't know. (The practice of renting flags) still exists today. Can't lose that..."

The provider informant further stated the reason for the emergence of flag rental.

"He rented the flag because one problem with the tender participants was that he did not have the requirements requested by the auction committee. He looks for a company that has these qualification requirements (to borrow from). That contractor has a group, right? It's told there. On average, those who rent out flags are already retired, no longer active so they rent them out. Renting a flag is more difficult because there is a fee of 2-3%."

The phenomenon of borrowing the flag has risks for PPK. A serious sanction for providers in procurement is placing the provider on the LKPP black list. Providers who are on this list cannot participate in the procurement of government goods and services for a certain period of time. If there is a practice of

borrowing flags, the blacklisting sanctions will be more severe for the person who owns the company (provider) and not for the person who rents the flag as the party who should be responsible for completing the work.

Cash flow management errors

This theme emerged in the research. Mistakes in managing cash flow are a particular cause for providers experiencing contract termination. This information was presented by PPK informants, PPK staff and providers as follows:

"If there is a calculation (bill turnover) that is blocked, it will be disbanded. "Our (provider's name) case was like that, he was stuck in a position where his money was buried all over the place, he wanted to collect the bill and it wasn't all due, he was already stuck (the work couldn't be continued and the contract was terminated)."

This is confirmed by information from PPK Staff:

"he (the provider) won in xxx and yyy. There is information that he (on another project he is working on) is not being paid because there is still something that needs to be completed. He calculated (the disbursement terms) wrong."

The provider informant stated the reasons for terminating the contract:

"I once saw a friend of mine (who missed) in his working capital. (Cause of contract termination) which is often in working capital. Just an error calculating the offer. Managing cash flow is important. To manage cash flow, PM (Project Manager) is in the field, sir. The PM is in charge of the field. He will report to the office staff later (material needs and payment). If the office person hasn't approved it, (the funds) can't be released. "If the contractor lifts on me, he will have problems with the bank and with the distributor (can't owe money to the distributor and get capital from the bank)."

Cash flow management errors are related to financial capabilities. Likewise, financial capability can be obtained with the help of bank financing. In an effort to help providers, government procurement regulations have provided facilities for providers to obtain advance payments for work. Advances can be provided with a deposit guarantee. This down payment can be given to both small and non-small businesses. Because the down payment is optional, this information is also provided in the tender announcement and can be known by the provider. This information is provided for providers to consider when submitting bids. The decision to participate or not participate in the tender based on information on the availability of down payments is entirely the provider's own decision.

To get a down payment, the provider must provide a letter of guarantee from the bank or insurance to the PPK. Banks usually require providers to deposit money into their account at that bank before a bank Guarantee is issued. This means that the provider still has to park funds in the account, which reduces his ability to carry out the contract. However, the amount of funds parked is usually not as large as the down payment received from PPK so that it can help fulfill the provider's working capital. If the provider provides insurance guarantees, the difference between the capital parked at the insurance company and the money obtained from PPK will be greater.

Seen from the PPK's point of view, the PPK will tend to choose bank guarantees over insurance guarantees. To get more working capital, providers need to negotiate with PPK so they can apply for a down payment guarantee from insurance rather than from the bank. In accordance with PPK regulations, it cannot require a down payment guarantee from the bank so that the negotiation option can be implemented.

Based on information from PPK staff informants, the down payment provided by PPK should be used to finance related work. However, when the money has entered the provider's account, the PPK's control over the use of advance payments by the provider becomes weak. There should be a certain mechanism regarding advances given to providers. The current arrangements as regulated by LKPP need to be implemented better by PPK and providers.

"The down payment supports the project. In the construction business process, down payments are normal... To avoid (capital constraints). But many of them were (used) for work in other places in the past. When providing down payments there should be a mechanism that the down payments are used for our projects. According to the documents in the application letter, there is a purchase plan (details). But not used. Just paper. In terms of documents (to provide down payment) you need a letter of application, a letter of plan for what you want to use the down payment for. The guarantee is from him, paid into his account. But after entering his account) we have no control over PPK"

"Now it's like this, they are bidding 100% (from HPS) construction profit, say above 20% (profit). What is their RPP (capital expenditure plan) actual cost plan? At most 70%-80%. 80% is the initial funding requirement, 20% (of 80%) is more than enough while they wait for the term to be paid again. So if a job is given a 20% down payment (but there are signs that the work is not going well), there is definitely something that is not suitable because the initial needs are practically just material. "The need for labor is also progressing."

Working capital is also related to payment terms. Provider informants said that terms can influence how they manage capital. The more terms there are, the working capital provided at the start of the job decreases.

"If the contract has a down payment of 20% and the term is 50%, and 100%, we need at most 20% to get to term I. Then after payment for term I, it is rolled back again to reach 100%. "If without a down payment, for example, the terms are 50% and 100%, we need at most 60% capital (after receiving the first term payment, it is used to complete the work)."

To obtain working capital, providers can also utilize financing from banks. Provider informants stated that several banks were willing to provide working capital to providers. The provider must provide collateral to the bank and enter into a financing contract with the bank. Bank financing costs are relatively cheap. The provider informant stated that the bank only charges an interest fee of approximately 1.6% of the debt disbursement ceiling and is paid in advance. Even though it is paid in advance, the interest rate is far below the interest on consumer loans. Larger costs actually occur for payments for the contract legalization process. The provider needs to prepare several million rupiah (approximately 3% of the loan ceiling) for notary services. These costs are sunk costs that must be sacrificed.

Apart from requiring collateral, bank financing also requires a good name. The bank will search the banking history of the people on the company deed. Credit failure that has been experienced by the person or the company can result in the bank loan not being approved. As with any agreement, it is important for the provider to carry out the commitments in the capital loan contract from the bank. Providers also need to maintain their good name because failure to complete work will result in termination of the financing contract. Apart from that, the financing contract also has a ceiling. When the provider's debt disbursement does not meet the ceiling target, the bank can lower the ceiling in the following year.

The agreement with the bank regarding the ceiling based on the amount of debt disbursement to some extent influences the provider's behavior. The provider will try to win as many work packages as possible so that the ceiling can be realized and that the following year the number does not decrease or may even increase. The desire to realize this ceiling may result in the submission of a tender offer with an unreasonable value. If providers are not careful in assessing work, the winner's curse can truly occur.

"I have working capital from the bank, the bank requires that I pay all of it. If you don't get it all out, for example 50%, an extension from the bank (next year) will only come out 50%. "The point is, how do you win first? The money from the bank has to be absorbed."

When the provider's capital is backed up by the bank, this uses PPK. The bank will monitor the use of funds from providers through direct surveys at work locations. The bank also usually confirms with the CO whether the provider is carrying out the contract properly. With back-up from the bank, PPK's concerns about provider capital can be slightly reduced.

Although bank financing for providers is something that can reduce the risk of contract termination, the PPK cannot require this in the provider's qualifications in the tender documents. LKPP regulations do not allow this. For this reason, PPK needs to find out for itself whether the provider is backed up by the bank or not through direct communication with the provider.

The provider's availability of cash flow needs to be accompanied by the ability to manage working capital. This study found that the greater number of contract terminations occurred due to doing a lot of work and incorrectly estimating when the working capital included in one project would reach a performance that met the payment terms so that there was a flow of money into the provider to be put into other work that was being done. Information from KDP informants and providers is as follows:

"He (the provider) won in xxx and yyy (another working unit). There is information that he was not paid because there was still something that needed to be done. He miscalculated the time (disbursement term)... Should have given 20% (advance) to him so it wouldn't have failed. "If the down payment is used properly for us (in the work package as it should be) the materials should be provided."

DISCUSSION

Based on the description above, it can be seen that providers who experience contract termination have considered the three limitations before making the decision to choose to terminate the contract even though in the end none of the targets were achieved in terms of time, scope or cost of construction work. It was previously stated that a provider would be better off being blacklisted for a year than experiencing losses. Thus, the more dominant problem of the three limitations is the cost limitation.

The case of contract termination at a polytechnic, as described, shows that work that is considered to have little risk is still very likely to experience contract termination. As in the triple constraint work, the cost factor is an important factor that influences the success of the contract. In 2021, the Real Capability Requirement (SKN) was removed from the tender requirements to make business easier for providers. However, this actually increases the risk of contract termination considering the behavior of providers who are not ready for this convenience. Providers actually take advantage of participating in many tenders without paying attention to financial strength when the provider wins these tenders. Further research is certainly needed to confirm or contradict the results of this study. By eliminating the financial capability requirement, the government needs to create other requirements that guarantee that providers will be able to complete the work, or create certain policies to make it easier for providers to obtain financial support.

This research finds a hypothesis about how to detect contract termination early on. Detecting the possibility of contract termination early can help PPK prepare all administrative requirements and make contract termination decisions with more confidence. In addition, work that is terminated immediately will allow more time for follow-up to either be continued by another provider, or other necessary action. So even if the contract is terminated, the construction work will not take long to complete.

One way to detect provider problems in completing contracts is through an informal approach. It is not easy for providers who are experiencing difficulties to express this at a meeting containing supervisors and PPK. In the case that was the subject of the study, indications that the provider was facing financial difficulties were detected before work was stopped. When asked about signs (providers experiencing financial difficulties) that emerged during informal communication, PPK 1 staff informant stated the following:

"It's impossible for it to come out at a meeting, (I think) in the canteen. The symptoms are visible. We can hear informal ones that are difficult to express in meetings.... that person is prestigious. If that (meeting) is crowded... Our ability to dig is also important"

This statement was made outside the meeting forum. Informal conversations between KDP staff and providers can be a way to detect possible contract terminations. After obtaining information about provider difficulties, PPK can take appropriate action. Administrative equipment needs to be reviewed again to make it easier to terminate the contract. The PPK staff informant stated:

"If we don't have a formal decision, it will be difficult"

This was confirmed by a PPK informant who stated:

"(When the approach is only formal) if you stick to it there, what happens is mechanistic. When mechanistic occurs, informal does not occur. How to make contract control less mechanistic. That's actually the homework... (even so) it remains formal. But don't stop at formal."

Completeness of administrative documents is usually a barrier to terminating a contract. The PPK will tend to terminate the contract if it feels that the administrative documents and contract termination steps have not been implemented adequately. LKPP regulates what needs to be done and can be used as a strong reason to terminate the contract. Informal communication again plays an important role in the cases in this research. KDP staff began to gradually raise awareness that provider difficulties might result in contract termination. Through this initial communication, it is hoped that providers will be aware and can better accept contract termination.

An informal approach can help PPK in anticipating contract termination. However, during this time there was an impression of maintaining distance between PPK and providers to build informal communication outside the meeting room. The PPK informant stated:

"When I was a PPK at (a working unit) my KPA told me, don't trust vendors. Vendors are the enemy. But after walking, no, they are not enemies. They are friends. "But don't say that friends are too close... because work and contracts are mutual, how can we proceed if (the vendor) becomes an enemy."

Building closeness with providers is recognized as having risks. The PPK Staff informant admitted that at the Ministry of Finance, informal communication with providers is still very limited. There is a threat to the integrity of PPK and PPK staff. The PPK informant added:

"The way we perceive integrity, what the risks in the legal (realm) actually are. Sometimes I'm scared there... I'm afraid of the wall talking, I'm afraid I'll become evidence if I enter the realm of law and so on. But actually it can't be like that. "That's business, in procurement we talk about business relationships."

When communication between the PPK and the provider does not run smoothly, there is a possibility that the provider can appeal the termination of the contract. If this happens, termination of the contract may take longer, ultimately extending the work to be completed through the appointment of another provider.

"(name of provider 1) is very informal with me. So he wanted to break up voluntarily. (Name of provider 2) That's not how it works informally... (provider 1) wants to sign the BA (Minutes). (even) BA incriminates him. (Provider 1) wants to admit he made a mistake in that BA.

CONCLUSIONS

Based on the steps carried out in this research, it can be concluded that the cause of contract termination is financial conditions. Inadequate financial conditions can result from poor cash flow management from the provider. Financial conditions and cash flow are influenced by the provider's accuracy in providing tender price offers. Having a lot of work done at the same time can also result in poor cash flow management. The government has made it easier for providers to participate in tenders. However, eliminating the Real Skills Requirement (SKN) can bring bad risks to jobs because providers could bid as many jobs as possible without adequate financial capabilities when they win a lot of jobs. This research provides initial information to the government as regulator regarding the elimination of financial capability requirements. For PPK, this research shows ways that can be taken to mitigate the risk of contract termination early.

This study was unable to obtain information from providers who experienced contract termination. Future research can use information from direct perpetrators to obtain stronger information.

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