

MALAYSIA'S GOVERNMENT PROCUREMENT REGIME

1. INTRODUCTION

The prime objective of the Malaysian Government procurement is to support Government programmes by obtaining value for money through acquisition of works, supplies and services. To meet this objective close attention is given to price factors as well as non-price factors such as whole life cost, quality, quantity, timeliness, maintenance and warranty. The benefits or value from procurement should commensurate with the costs involved and that the best procurement is well and thoroughly evaluated, reasoned and justified. In this context, the Malaysian Government procurement is based on the following policies, principles, objectives and procedures.

2. GENERAL PROCUREMENT POLICIES, PRINCIPLES AND OBJECTIVES

2.1 GOVERNMENT PROCUREMENT POLICIES

The Malaysian Government Procurement Policies, in general, provide support for the full achievement of the objectives and aspirations of the National Development Policy and Vision 2020 i.e. towards a developed nation status. The principal policies are as follows:

- a) To stimulate the growth of local industries through the maximum utilisation of local materials and resources;
- b) To encourage and support the evolvement of Bumiputera (indigenous) entrepreneurs in line with the nation's aspirations to create Bumiputera Commercial and Industrial Community;
- c) To increase and enhance the capabilities of local institutions and industries via transfer of technology and expertise;
- d) To stimulate and promote service oriented local industries such as freight and insurance; and
- e) To accelerate economic growth whereby Government procurement is used as a tool to achieve socio-economic and development objectives.

2.2 PROCUREMENT PRINCIPLES

In general Government procurement is essentially based on the following principles:

- a) Public Accountability
Procurement should obviously reflect public accountability entrusted with the Government.
- b) Transparency
All procurement regulations, conditions, procedures and processes need to be clear and transparent to facilitate better understanding among suppliers and contractors.
- c) Value For Money
Government procurement should yield the best returns for every Malaysian Ringgit spent in terms of quality, quantity, timeliness, price and source.

- d) Open And Fair Competition
Processes involving Government procurement should offer fair and equitable opportunities to all those participating or competing in any procurement.
- e) Fair Dealing
All acceptable bids will be processed fairly based on current rules, policies and procedures.

2.3 PROCUREMENT OBJECTIVES

Government procurement comprises the following objectives in general:

- a) To ensure continuous supply of materials and services to meet the Government needs from the best and reliable sources;
- b) To ensure efficient, effective and ethical procurement practices to enable the Government to achieve best value for money without compromising on quality, delivery and other price and non-price factors;
- c) To stimulate and encourage the growth and development of local industries through the optimal usage of local resources and materials;
- d) To expand and invigorate the local industrial sector by means of transfer of technology and expertise to suit the nation's needs; and
- e) To promote alternative and multiple sourcing through supplier/vendor development according to the aspirations and vision of the Government.

3. PROCUREMENT ENTITIES

3.1 MALAYSIAN GOVERNMENT ADMINISTRATION AND MACHINERY

The Malaysian Public Sector and also the Malaysian Government Administration and machinery mainly consist of the following entities:

- a) The Federal Government
The Federal Government is, in fact, the Central Government with 25 Federal Ministries headed by their respective Ministers and administrative heads, the Secretary-Generals.
- b) The State Governments
There are 13 State Governments within Malaysia implementing state functions along with Federal Departments. The State Governments generate their own revenues and incur their own expenditures even though the Federal Government undertakes projects at the state level agreed upon in the Concurrent List and Federal List in the Constitution of Malaysia.
- c) Local Authorities
The Local Authorities constitute the City Councils, Municipalities and District Councils that operate with revenue derived from sources within their jurisdiction and boundaries namely assessment, licensing etc. They also receive financial grants from the Federal Government and respective State Governments. These Local Authorities enjoy financial autonomy although they adhere to the general Government procurement procedures.

d) Statutory Bodies

Statutory bodies are set up under Statute Acts both by the Federal and State Governments. These bodies are normally set up for specific purposes and although they are autonomous, they are also generally governed by Government procurement procedures.

4. LAWS AND REGULATIONS RELATED TO GOVERNMENT PROCUREMENT

4.1 FINANCIAL AUTHORITY

The Federal Government financial authority is vested with the Minister of Finance and the Secretary-General of the Ministry of Finance with directions from the Minister. In the case of State Governments, the financial authority is vested with the respective Chief Ministers, and the respective State Financial Officers with directions from the respective Chief Ministers. The financial authority in Local Authorities and Statutory Bodies is vested with the respective Chairpersons and the Councils or the Board of Directors.

4.2 FINANCIAL PROCEDURE ACT 1957 (Revised 1972)

The Financial Procedure Act 1957 (Revised 1972), provides for the control and management of the public finances of Malaysia and outlines financial and accounting procedures. It includes procedures for the collection, custody and payment of the public monies of Malaysia and of the States, and also the purchase, custody and disposal of public property and related matters.

4.3 TREASURY INSTRUCTIONS

The Treasury Instructions (TI) detail out financial and accounting procedures and encompass the regulations that need to be adhered to in the management of Government funds including procurement.

4.4 GOVERNMENT CONTRACT ACT 1949

The Government Contract Act 1949 empowers the respective Ministers in the respective ministries to enter into contracts and also empowers the respective ministers to delegate powers to Government Officers to enter into contracts on behalf of the Government.

4.5 TREASURY CIRCULAR LETTERS

Treasury Circulars are issued from time to time to inform, clarify, implement, improve and amend certain policies, rules and procedures whenever required by the Government and financial authorities.

4.6 FEDERAL CENTRAL CONTRACT CIRCULARS

Federal Central Contract Circulars are issued to inform the users on the availability of common user items which are centrally purchased. The Central Contract Circulars normally contain details such as items, name of suppliers, areas of supply and time of delivery. Apart from procurement principles and objectives, most often the Central Contracts objectives are to promote local products and develop vendors.

5. CATEGORIES OF GOVERNMENT PROCUREMENT

5.1 For purposes of procurement, the Malaysian Government procurement has been categorized as follows:

a) Works

Works contracts include construction and engineering activities involving infrastructure and structures such as buildings, airports, roads/highways, dams, drainage etc. It is also inclusive of mechanical and electrical aspects of works.

b) Supplies

Supplies include the supply of raw, intermediate or finished goods and products for any activity of users. Also included are construction materials, food products, uniforms, vehicles, equipment, spare parts, furniture etc.

c) Services

Services include engagement of manpower, expertise and consultants in the areas of feasibility studies, research, designing, surveying, management etc. Other services such as repairs, maintenance and cleaning services are minor activities under this category.

6. TYPES AND MODES OF PROCUREMENT

6.1 DIRECT PURCHASE

a) This procedure allows procurement of supplies and services up to the value of RM50,000 directly through the issue of a Government Order to any known suppliers of goods or services consistently supplying goods at acceptable quality and reasonable price. The requirement of registration is exempted.

b) Procurement of works up to the value of RM20,000 may be done through the issue of a Works Indent to a contractor who is registered with the Contractors Services Centre (PKK) and Construction Industry Development Board (CIDB) Malaysia.

6.2 QUOTATION

a) Procurement of supplies and services above the value of RM50,000 and up to RM500,000 is done through calling of quotations and the minimum number of quotations to be invited is five. All suppliers wishing to take part in quotations must be registered with the Government.

b) Procurement of works above the value of RM20,000 and up to RM500,000 is done through calling of quotations and the minimum number of quotations to be invited is five. All contractors wishing to take part in quotations must be registered with the PKK and CIDB.

6.3 TENDERS

Procurement of works, supplies and services above the value of RM500,000 must be done through tender processes. All contractors intending to participate in local tenders must be registered with the Government. International tenders will be invited for supplies and services if there are no locally produced supplies or services available. For specific works, if local contractors do not have the expertise and capability, tenders may be called on a joint venture basis between local and foreign contractors to encourage the transfer of

technology. International tenders for works may only be called when local contractors do not have the expertise and capability, and a joint venture is not possible.

7. TENDER PROCUREMENT PROCESS

7.1 SPECIFICATIONS

Ministries and Departments are required to initially prepare tender specifications. For this purpose, a technical committee needs to be formed. Specifications should be as detail as possible to give the bidders a clear idea of what is required or expected. The specifications drawn are functional or performance based although technically detailed specifications are sometimes used. Compliance to acceptable international standards or their equivalent may also be included in the specifications. However, tailored specifications to suit any brand or country are strictly forbidden. The system provides for an objection from potential bidders, a period of 14 days from the date of issue of tender documents on any tailored specifications for local tender and 28 days for international tender.

7.2 TENDER DOCUMENTS

Tender documents are prepared and distributed at a cost, the minimum being RM50. The contents of the tender documents include general and specific terms and conditions, specifications, a copy of agreement, price schedule, delivery period, objection period and the scope of works expected.

7.3 ADVERTISEMENT

All tenders are advertised in at least one local daily in the Malay language. International tenders must be advertised in at least two local dailies i.e one in the Malay language and one in the English language. Procurement opportunities can also be accessed through the procuring agencies' websites, MyPROCUREMENT portal (<http://myprocurement.treasury.gov.my>) and MyGovernment portal (www.malaysia.gov.my). Bidders are given a submission period of not less than 21 days for local tenders. For international tenders the submission period may not be less than 56 days.

7.4 SALE OF TENDER DOCUMENTS

Sale of tender documents may commence from the date of publication of advertisement in the dailies. Only contractors fulfilling the local registration requirement may purchase tender documents for local tenders. In the case of international tender, supplies and services contractors are exempted from the local registration requirement. However, works contracts require foreign contractors to register with the CIDB. The requirement to register with CIDB is mandatory for all contractors dealing with the construction industry in Malaysia under an Act of Parliament.

7.5 TENDER DEPOSITS

Local suppliers and contractors registered with the Government are exempted from tender deposits. However, international bidders are required to furnish a tender deposit ranging from RM60,000 for bids below RM5 million, to RM 1 million for bids exceeding RM30 million for supplies and services. For works contracts, bidders are required to furnish tender deposits ranging from RM60,000 for contracts below RM10 million, to RM 1 million for contracts exceeding RM100 million.

7.6 CLOSING AND OPENING OF TENDERS

The tender advertisement stipulates the precise date and time of closing and the address to which all tenders must be sent. The tenders may be sent by post or dropped into boxes specially made available for this purpose. Tender proposals by bidders should include the technical and financial proposals prepared separately in two copies and sealed in separate envelopes to facilitate scheduling and independent evaluation. A Tender Opening Committee comprising of senior government officers will open and schedule all the tenders and prepare a schedule of prices quoted. All tenders will be accorded a serial number and the name of bidders will be omitted to enable fair, just and independent evaluation of tenders by the Technical and Financial Evaluation committees.

7.7 EVALUATION OF TENDERS

Evaluation committees will evaluate all tenders based on the criteria set in the tender document. Evaluation is normally done by two separate committees i.e. Technical Evaluation Committee and Financial Evaluation Committee. The evaluation of both committees will result in the ranking of tenders received and the tender secretariat will apply the pre-determined weightage for the final evaluation of all tenders. This tender evaluation report will then be submitted to the Procurement Boards of Ministries/Departments (Agency Procurement Boards) for consideration and decision.

7.8 SELECTION OF SUCCESSFUL BIDDER

The Agency Procurement Boards will consider and select the successful bidder. Selection of tenders will be based on the general procurement principles, pre-determined criteria and final evaluation. All tenders are to be considered by the Agency Procurement Boards. However in cases where the tender value is above RM100 million for works and RM50 million for supplies and services, the tenders would then be sent with recommendation of the Agency Procurement Boards to the Ministry of Finance for final decision. Information of successful bidder will be displayed in the procuring agencies' websites and MyPROCUREMENT portal.

8. REGISTRATION REQUIREMENT OF CONTRACTORS

8.1 All individuals, companies or corporate bodies intending to participate in Government procurement i.e. to do business with the Government are required to undergo a registration process. This includes all contractors of works, supplies and services. Registration authorities are as below:

<u>Category</u>	<u>Registration Authorities</u>
Works	Contractors Services Centre (PKK), Ministry of Works and the Construction Industry Development Board (CIDB) Malaysia
Supplies	Government Procurement Division, Ministry of Finance Malaysia
Services	Government Procurement Division, Ministry of Finance Malaysia

8.2 The registration requirement is to ensure that companies/contractors are bona fide, truly committed in the relevant business fields and possesses the capability to carry out works or supply and provide the services. For works, construction and electrical contractors are registered separately. There are six (6) classes of registration for construction and four (4) classes for electrical contractors under the PKK registration.

- 8.3 This registration requirement enables the government to take disciplinary action and impose penalties on contractors who do not perform according to contract. Penalties imposed according to seriousness of deviations, range from warning, suspension of registration for a maximum period of 5 years and to blacklisting of Companies/Board of Directors of the contracting parties from conducting further businesses with any Government Ministry, Department or Agency. This applies to contractors/suppliers with consistent or serious deviations from the contract conditions where enforcement of the contract conditions alone would not resolve the seriousness or complications as the case might be.
- 8.4 Exemption from registration is allowed under certain circumstances but where exemption is granted contractors need to furnish tender deposits.

9. CENTRAL PURCHASE OF SUPPLIES THROUGH FEDERAL CENTRAL CONTRACTS/PANEL CONTRACTS

The Government Procurement Division, Ministry of Finance establishes and facilitates procurement of common user items through Federal Central Contracts/Panel Contracts. These contracts are made through open local tenders and sometimes through negotiated tenders. When a Federal Central Contract/Panel Contract has been made for a particular item, all ministries and departments whether Federal or State are required to purchase from these contracts. Items under the central contracts/panel contracts range from foodstuff, office furniture and vehicle spare parts.

10. AGENCY PROCUREMENT BOARDS

- 10.1 All tenders i.e. procurement of supplies, services and works above the value of RM500,000 must be considered and decided by Agency Procurement Boards. The Minister of Finance appoints all Federal Government Procurement Boards and the Chief Ministers of the respective states appoints the State Government Procurement Boards. The chairperson is usually a Head of Department or a Controlling Officer who under the Financial Procedure Act 1957 is empowered to manage the annual allocation given to a particular Ministry or Department.
- 10.2 Currently two (2) Agency Procurement Boards have been established in all federal ministries i.e. Agency Procurement Board 'A' and Agency Procurement Board 'B'. The Agency Procurement Board 'A' is empowered to decide on tenders up to RM50 million for supplies and services, and up to RM100 million for works. The representative from the Ministry of Finance is the permanent member of the Agency Procurement Board 'A' and his presence is mandatory to validate the decision of the Board. This requirement is mainly to ensure that all procurement principles, policies, rules and regulations and procedures are strictly adhered to. The Agency Procurement Board 'B' is empowered to decide on all tenders below RM20 million without the presence of a representative from the Ministry of Finance.
- 10.3 Tenders above the values of RM50 million for supplies and services and RM100 million for works for Government Ministries/Departments and tenders above RM100 million for statutory bodies must be forwarded to the Ministry of Finance for final decision. Any decisions of the Agency Procurement Boards which are not unanimous must also be forwarded to the Ministry of Finance for final decision.

11. LETTER OF INTENT

A Letter of Intent will be issued to the successful bidder, if necessary. The Letter of Intent may consist of additional terms and conditions, mostly safeguards and important for the successful implementation of the contract. The Letter of Intent is not legally binding. The final decision on acceptance of the tender depends upon the successful negotiation and/or acceptance of additional terms and conditions.

12. LETTER OF ACCEPTANCE

A Letter of Acceptance is directly issued to the successful bidder if his bid is accepted in total. The successful bidder is then required to attest and return the Letter of Acceptance to the Government. If negotiations are necessary where the Letter of Intent so requires, then upon completion of negotiations, the Letter of Acceptance is issued to the successful bidder and it must be returned to the Government for the formalisation of contract. The Letter of Acceptance forms a part of the contract documents and is legally binding.

13. FORMAL CONTRACT

Formal contracts are drawn upon the receipt of the Letter of Acceptance from the successful bidder. Bidders are required to forward Performance Bonds based on stipulated rates according to the value of a contract. Performance Bonds must be obtained from locally incorporated banks, insurance companies and financial institutions that are licensed to operate in Malaysia. The current rates are as follows:

- a) For Supplies and Services contract
 - i) 2.5 percent of contract value for contracts exceeding RM200,000 and less than RM500,000; and
 - ii) 5.0 percent for contracts exceeding RM500,000.
- b) For Works contract
 - i) 5.0 percent of the contract value exceeding RM200,000.

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