

Malaysia

Legal and institutional framework

The legal framework for public procurement in Malaysia consists of the Financial Procedure Act 1957, the Government Contract Act 1949, Treasury Instructions, and Treasury Circular Letters. These instruments apply to procurement by all federal and state governments and semigovernmental agencies but not state-owned enterprises.

Procurement in Malaysia is largely decentralized. The Government Procurement Management Division of the Ministry of Finance sets the procurement policy and rules. The minister of finance or the chief minister for the state procurement boards appoints a tender board in each procuring agency to administer specific procurements.

Procurement methods and procedures

Clear and comprehensive rules help avoid corruption resulting from an arbitrary choice of procurement methods and proceedings. The laws, regulations, and policy guidelines on public procurement in Malaysia are available in print form and on the Web site of the Ministry of Finance. Open tendering is used for procurements above MYR200,000 (USD54,000), closed tendering for procurements between MYR50,000 and MYR200,000 (USD13,500–USD54,000), and direct purchasing for procurements below MYR50,000. For tenders that target local suppliers, the bidding period is 21 days. For international tenders, which arise only for goods and services that are not available locally, the bidding period is 56 days. Model tender documents, which can increase transparency and consistency, are found in the Treasury Instruction, Treasury Circular Letters, and the Procurement Guidelines Book issued by the Ministry of Finance. The Procurement Guidelines Book also explains procurement procedures to government agency staff. For each procurement, the procuring agency sets up a technical committee to determine the technical specifications of the tender.

Wide publication of tenders can help reduce corruption by increasing transparency and participation. Under Malaysian rules, local tenders must be advertised in at least one local newspaper in the Malay language. International tenders must be advertised in at least one Malay-language newspaper and one English-language newspaper. Foreign embassies in Malaysia and High Commissions are also informed. All tenders, whether local or international, are posted on the Web sites of the procuring

agencies and the central procurement Web site of the Malaysian Government.

The handling and selection of bids is a crucial stage in the procurement process. Entrusting panels rather than individuals with decisions during this procedure can enhance oversight and thus reduce the risk of corruption. For each tender in Malaysia, a tender opening committee comprising senior government officials opens and records the bids in a register. Two other committees created by the tender board evaluate the technical and financial aspects of the bids according to a scoring system. To enhance fairness, the evaluation committees do not know the identities of the tenderers. The evaluation committees report to the tender board or the Ministry of Finance (depending on the value of the procurement), which makes the final selection. In exceptional cases, the Cabinet will choose the winning bid. Price and non-price factors are considered. The winning bidder is advised by letter. The relevant procurement board records but does not disclose the reason for selecting the winning bid. After awarding the contract, the procuring agency may send the successful bidder a letter of intent to clarify the specifications stipulated in the bid or to require additional contractual terms. Failure of tendering occurs when no bidders meet the technical requirements, in which case the tender may be reopened with the approval of the tender board.

Safeguarding and enforcing integrity

The creation, dissemination, implementation, and enforcement of codes of conduct for procurement personnel can contribute to preventing corruption. There is no code of conduct in Malaysia that specifically targets procurement personnel. However, the Public Officers (Conduct and Discipline) (Amendment) Regulations 2002 contain conflict-of-interest provisions that apply to all civil servants. Procedures for procurement require procurement personnel with a conflict of interest to declare it and to withdraw from the process. To raise awareness of ethics, the National Institute of Public Administration provides training that includes integrity issues to procurement personnel. To prevent procurement officials from establishing relationships with suppliers that could engender corruption, the Public Services Department recommends rotating staff in sensitive and nonsensitive positions every three and five years, respectively.

Adequate sanctions are equally important in preventing corruption in procurement. The detection of corruption is strengthened by a mandatory requirement for public officials to report all attempts of bribery to the police or the Malaysia Anti-Corruption Agency. Giving or receiving

a bribe is a criminal offense under the Anti-Corruption Act and the Penal Code and General Orders. Corrupt officials may also be administratively sanctioned and their assets may be confiscated. Penal action cannot be taken against a legal person, but the Government may debar a company that has engaged in corruption. The Government determines the length of debarment and advises all government agencies of its decision.

Complaint and review mechanisms allow bidders to verify that the procurement process conforms to the prescribed procedures. The possibility of review is also a strong incentive for procurement officials to abide by the rules. Malaysia offers bidders a multitude of channels for complaint. A failed bidder may complain to a procuring agency, which may cancel a tender if it finds any irregularities. An aggrieved bidder may also complain to the Public Complaints Bureau, the Anti-Corruption Agency Malaysia, or the Public Accounts Committee. In addition, the Monitoring and Control Division of the Ministry of Finance monitors adherence to procurement rules, and may also set up special task forces to investigate complaints. The minister of finance, however, has the ultimate decision-making authority regarding complaints.

Audits are also important review mechanisms. All procuring agencies in Malaysia have internal audit units that regularly examine weaknesses in and possible breaches of procurement rules. The Auditor General conducts external audits of procurement procedures and may order corrective actions. The reports of the Auditor General are published and presented annually to Parliament.

Review mechanisms, however, are effective only if the documentation of procurement proceedings is complete and readily available. In Malaysia, all procurement actions and decisions are recorded and the records are kept between one and 20 years, depending on the nature of the document. The records are generally accessible only to authorized procurement personnel.

A way forward

Malaysia is invited to assess whether the measures taken to ensure the integrity of bidders and procurement personnel could be strengthened by codes of conduct and penal provisions that are specifically tailored to procurement personnel and to corrupt practices that typically occur in the procurement process. In this regard, Malaysia is further invited to take remedial action where appropriate.

Relevant documentation

Electronic Procurement System of the Government of Malaysia: <http://home.eperolehan.com.my>

APEC Government Procurement Survey (2003) and Summary of Government Procurement Resources in Malaysia: www.apec.org