

# **THEMATIC COMPILATION OF RELEVANT INFORMATION SUBMITTED BY MALAYSIA**

## **ARTICLE 9 UNCAC**

### **PUBLIC PROCUREMENT**

#### **MALAYSIA (SEVENTH MEETING)**

##### **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.

In ensuring fairness and best value for money, public procurement of supplies undergoes the following processes:

- a. needs determination (TI No.168) and clear specification for supplies/ services/works determined (TI No.174)
- b. purchase through electronic system (TI No.168 A)
- c market survey (TI 169)
- d. utilization of local content, supplies and services (TI No. 169.2)
- e. calling for quotation ( procurement below RM500,00) (TI.No.170)
- f. calling of tender (procurement more than RM 500,00) (TI No.171) through public advertisements in the local media/ website (TI No.172.1) or minimum of five tender suppliers (TI.No.172.1 para (c))
- g. direct purchase (procurement below RM50,000)(TI. No. 173)

#### 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.

E.g. Integrity Pact

#### 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](http://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: Category Registration Authorities 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, and 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 formalization 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.

#### SYSTEM FOR APPEALS, REVIEWS AND REMEDIES

Complaint and review mechanisms that are already in place in Malaysia 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 Malaysian Anti-Corruption Commission 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

Remedial action under Integrity Pact mechanism: Clause on Corruption in Government Procurement Documents: "Termination on Corruption, Unlawful or Illegal Activities"

(reference: Ministry of Finance Circular Letter No 10 of 2010 - Guidelines for the Implementation of Integrity Pact in Government Procurement or Surat Pekeliling Perbendaharaan Bil 10 Tahun 2010 - Garis Panduan Perlaksanaan Integrity Pact Dalam Perolehan Kerajaan, in the National Language) which reads as follows:

a) Without prejudice to any other rights of the Government, if the [Company/Firm], its personnel, servants, or employees is convicted by a court of law for corruption or unlawful activity or illegal activities in relation to this [agreement/contract] or any other agreement that the [Company/Firm] may have with the Government, the Government shall be entitled to terminate this [Agreement/Contract] at any time, by giving immediate written notice to that effect to the [Company/Firm]

b) Upon such termination, the Government shall be entitled to all losses, costs, damages and expenses (including any incidental costs and expenses) incurred by the Government arising from such termination.

c) For the avoidance of doubt, the Parties hereby agree that the [Company/Firm] shall not be entitled to any form of loss including loss of profit, damages or whatsoever upon termination of this [Agreement/Contract].

Remedial actions through civil proceedings as provided by:-

a) CIVIL LAW ACT 1956 (Act67) -PART VI-FRUSTRATED CONTRACTS

Adjustment of rights and liabilities of parties to frustrated contracts

15. (1) Where a contract has become impossible of performance or been otherwise



frustrated, and the parties thereto have for that reason been discharged from the further performance of the contract, subsections (2) to (6) shall, subject to section 16, have effect in relation thereto.

(2) All sums paid or payable to any party in pursuance of the contract before the time when the parties were so discharged (in this Act referred to as “the time of discharge”) shall, in the case of sums so paid, be recoverable from him as money received by him for the use of the party by whom the sums were paid, and, in the case of sums so payable, cease to be so payable:

Provided that, if the party to whom the sums were so paid or payable incurred expenses before the time of discharge in, or for the purpose of, the performance of the contract, the Court may, if it considers it just to do so having regard to all the circumstances of the case, allow him to retain or, as the case may be, recover the whole or any part of the sums so paid or payable, not being an amount in excess of the expenses so incurred.

(3) Where any party to the contract has, by reason of anything done by any other party thereto in, or for the purpose of, the performance of the contract, obtained a valuable benefit (other than a payment of money to which subsection (2) applies) before the time of discharge, there shall be recoverable from him by the said other party such sum (if any), not exceeding the value of the said benefit to the party obtaining it, as the Court considers just, having regard to all the circumstances of the case and, in particular-

(a) the amount of any expenses incurred before the time of discharge by the party benefited in, or for the purpose of, the performance of the contract, including any sums paid or payable by him to any other party in pursuance of the contract and retained or recoverable by that party under subsection (2); and

(b) the effect, in relation to the said benefit, of the circumstances giving rise to the frustration of the contract.

(4) In estimating, for the purposes of subsections (1) to (3), the amount of any expenses incurred by any party to the contract, the Court may, without prejudice to the generality of the said subsections, include such sum as appears to be reasonable in respect of overhead expenses and in respect of any work or services performed personally by the said party.

(5) In considering whether any sum ought to be recovered or retained under subsections (1) to (4) by any party to the contract the Court shall not take into account any sums which have, by reason of the circumstances giving rise to the frustration of the contract, become payable to that party under any contract of insurance unless there was an obligation to insure imposed by an express term of the frustrated contract or by or under any enactment.

(6) Where any person has assumed obligations under the contract in consideration of the conferring of a benefit by any other party to the contract upon any other person, whether a party to the contract or not, the Court may, if in all the circumstances of the case it considers it just to do so, treat for the purposes of subsection (3) any benefit so conferred as a benefit obtained by the person who has assumed the obligations as aforesaid.

Provisions as to application of section 15

16. (1) Section 15 shall apply to contracts whether made before or after the coming into force of this Act.

(2) Section 15 shall apply to contracts to which the Government is a party in like manner as to contracts between subjects.

(3) Where any contract to which section 15 applies contains any provisions which, upon the true construction of the contract, is intended to have effect in the event of circumstances arising which operate, or would but for the said provision operate, to frustrate the contract, or is intended to have effect whether those circumstances arise or not, the Court shall give effect to the said provision and shall only give effect to section 15 to such extent, if any, as appears to the Court to be consistent with the said provision.

(4) Where it appears to the Court that a part of any contract to which section 15 applies can properly be severed from the remainder of the contract, being a part wholly performed before the time of discharge, or so performed except for the payment in respect of that part of the contract of sums which are or can be ascertained under the contract, the Court shall treat that part of the contract as if it were a separate contract and had not been frustrated and shall treat section 15 as only applicable to the remainder of that contract.

(5) Section 15 shall not apply-

(a) to any charter party, except a time charter party or a charter party by way of demise, or to any contract (other than a charter party) or the corresponding provisions of any written law for the carriage of goods by sea;

(b) to any contract of insurance, save as is provided by subsection (5) thereof; or

(c) to any contract to which section 7 of the Sale of Goods Act 1893 of the United Kingdom [56 and 57 Vict.c.71] (which avoids contracts for the sale of specific goods which perish before the risk has passed to the buyer) or the corresponding provisions of any written law applies, or to any other contract for the sale, or for the sale and delivery, of specific goods, where the contract is frustrated by reason of the fact that the goods have perished.

a) GOVERNMENT PROCEEDINGS ACT 1956 (ACT 359)

Claims enforceable by proceedings against the Government

Section 4. Subject to this Act and of any written law, any claim against the Government which-

(a) is founded on the use or occupation (a) or the right to the use or occupation of State land, or

(b) arises out of the revenue laws; or

(c) arises out any contract made by the authority of the Government which would, if such claim had arisen between subject and subject, afford grounds for civil proceedings or

(d) is a claim (other than a claim in tort) for damages or compensation not included in the preceding paragraphs which might lawfully be enforced by civil proceedings as between subject and subject;

shall be enforceable by proceeding against the Government for that purpose in accordance with this Act.

MEASURES TO REGULATE MATTERS REGARDING PERSONNEL RESPONSIBLE FOR PROCUREMENT

Personnel responsible for procurement are subjected to the following regulations

1.Regulations On Declaration Of Interest:

Any officer who have vested interest in the Quotation/Tender are required to declare his/her interest and to dismiss himself/herself in writing. (TI No.197.3)

Regulation 4 (2) of the Public Officers (Conduct and Discipline) Regulation 1993, as

follows:

An officer shall not:-

- a. subordinate his public duty to his private interest;
- b. conduct himself in such manner as is likely to bring his private interest into conflict with his public duty;
- c. conduct himself in any manner likely to cause reasonable suspicion that-
  - i. he has allowed his private interest to come into conflict with his public duty so as to impair his usefulness as a public officer; or
  - ii. he has use his public position for his personal advantage;
- d. Conduct himself in a such a manner as to bring the public service into disrepute or bring discredit to the public service;
- e. Bring or attempt to bring any form of outside influence or pressure to support or advance any claim relating to or against the public service, whether the claim is his own or that of any other officer.

2. Prime Minister's Guide 8 March 2010: Action Guide Lines with regards to Lobbying by Government Leaders, Influential or Other persons on Official Matters.

A guide to define parameters of support letters and/ or other medium of communication, to deter undue influence by individuals on decision making process of public officials in procurement, human resources management, application of license/permits, loan, scholarship, citizenship etc.

3. Treasury Circular letter No 11 of 1995: Guidelines On Overseas Trips Due to Government Procurement

A circular setting out conditions and procedures to be complied with in regards to overseas trips (for training/ plant inspection/ tender assessment) sponsored by suppliers or firms in connection with contracts awarded.

4. Letter of Undertaking by Public Officials -Regulation 19 of the Public Officers Regulations (Appointment, Promotion, and Termination)2005.

A mandatory requirement for all public officials appointed by the Government to abide the provisions of the Public Officers (Conduct and Discipline) Regulation 1993, General Orders, Service Circulars, Circular Letters, Regulation and others rules issued by His Majesty The King form time to time.

5. Ministry of Finance Service Circular No.10 of 2010- Guidelines for the Implementation of Integrity Pact in Government Procurement

The Integrity Pact comprises of a declaration process by bidders not to offer or give any form of bribes as a means to obtain contract or to facilitate certain processes in Government Procurement. Both bidders and civil servants are required to sign pact to refrain from getting involved in corrupt practices throughout the procurement process until the project is completed.

6. REGULATIONS ON SCREENING OF PERSONNEL IN CHARGE OF PUBLIC PROCUREMENT

a) Security Vetting by the Police, Department of Insolvency and Department of Health- Public Officers Regulations (Appointment, Promotion and Termination) 2005

b) Integrity Vetting by the Malaysian Anti-Corruption Commission for public officials going for promotion- Service Circular No.7 of 2010

## 7. REGULATIONS ON TRAINING OF PERSONNEL IN CHARGE OF PROCUREMENT

Specific training for procurement personnel that also include integrity, which are undertaken by the National Institute of Public Administration, (INTAN) Malaysia under the Financial Management Center. Details of the courses are available at [www.intanbk.intan.my](http://www.intanbk.intan.my). Some of the courses conducted by the Center are as follows :-

- Government Procurement Management
- Accountability in the Financial Management
- Financial Procedures
- Cost Strategic
- Asset Management.

All civil servants, inclusive of those personnel in charge of procurement, are required to attend a training Integrity Management Module vide Government of Malaysia Service Circular No 4/1999 which train the civil servant how to report acts or suspected acts of corruption . The module covers, amongst others, the following topics:-

- a. Identification of acts of corruption, acts of corruptions , malpractices and abuse of powers; and
- b. The acts of corruption, malpractices and abuse of powers reporting systems such as the using of email, toll-free, hotline, complaints counter handle by MACC officers in Head Quarters, State offices and branches.

**MALAYSIA & UNCITRAL (United Nation Commission on International Trade Law)**

Malaysia has been elected as one of the Asian States to be a member of UNCITRAL Commission for another six-year term beginning on 8 July 2013. Ending in 2019. (Malaysia was a member of the Commission since 2007-2013).

The Malaysian Arbitration Act 2005 ('the Act') is based on the UNCITRAL Model Law 1985 and is similar to the New Zealand Arbitration Act 1969. The Act applies to both domestic and international arbitrations and differs only in relation to certain aspects of the act such as enforcement

In as far as UNCITRAL Model Law on Public Procurement (2011), Malaysia, represented by its Foreign Mission in Vienna, has participated in Working Group 1: Procurement.

NOTE: The above mentioned legislation, regulations, circulars and guidelines as well as the UNCITRAL Model Law on Public Procurement related documents are made accessible to the public on the myprocurement website of the Ministry of Finance (International Procurement Initiative).

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### **PUBLIC PROCUREMENT**

#### **MALAYSIA (SIXTH MEETING)**

#### **MALAYSIA'S GOVERNMENT PROCUREMENT REGIME**

##### **1. INTRODUCTION**

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##### **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

MYR 50,000 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 MYR 500,000 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 MYR 20,000 and up to MYR 500,000 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 MYR 500,000 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 MYR 50. 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](http://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 MYR 60,000 for bids below MYR5 million, to MYR 1 million for bids exceeding MYR30 million for supplies and services. For works contracts, bidders are required to furnish tender deposits ranging from MYR 60,000 for contracts below MYR 10 million, to MYR1 million for contracts exceeding MYR100 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 MYR 100 million for works and MYR 50 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:

Category Registration Authorities 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 MYR 500,000 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 MYR 50

million for supplies and services, and up to MYR 100 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 MYR 20 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 MYR M100 million for works for Government Ministries/Departments and tenders above MYR100 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 MYR 200,000 and less than MYR 500,000; and
  - ii) 5.0 percent for contracts exceeding MYR 500,000.
- b) For Works contract
  - i) 5.0 percent of the contract value exceeding MYR 200,000.

## **14. GOVERNMENT TRANSFORMATION PROGRAMME ON PROCUREMENT**

The Government Transformation Programme (GTP) was established in 2010 based on the concern of the people about several key issues afflicting the nation. One of the key issues was fighting corruption. In the efforts to combating this despicable crime, the National Key Result Areas (NKRA) Fighting Corruption has formed to oversee the transformation. One of the focus areas of NKRA Fighting Corruption was government procurement where various initiatives were developed as follows:

**a) Integrity Pact (IP)** – On December 16, 2010, the Ministry of Finance issued a guideline on the implementation of the Integrity Pact in all government contracts covering supplies, works and services. All involved parties, including administrative and approval officers, bidders and board/committee members of government procurements, are required to sign the Integrity Pact and to pledge to not to engage in any activities or transactions leading to corruption and bribery during the implementation period of the projects.

The Integrity Pact (IP) is a tool developed in the 1990s by Transparency International to help the government, businesses and civil society to prevent corruption in public contracts. It consists of a process that includes an agreement between Government department and bidders for a public sector contract.

The introduction of the Integrity Pact further ensures that public contracting is free from corruption such as:-

- Prevent bribery by parties involved
- Report acts of corruption
- Ensure that 'unnecessary costs' are not incurred on the Government

If this undertaking is breached, pre-agreed sanctions, including blacklisting, can be enforced.

The Government department or agency also signs an undertaking not to demand or accept bribes and guaranteeing access to information and the publication of the award decision. An arbitration process is built into the Integrity Pact to strengthen the enforcement of its provisions. Civil society groups are roped in to monitor the contracting process as has been done in several countries who have introduced the Integrity Pact that has successfully reduced public expenditure.

- Receive an official invitation to submit a tender
- Pledge not to be participate in any act of corruption
- Establish a Code of Conduct to eradicate corruption
- Adhere to the contract which includes an anti- corruption clause.

**a) MYPROCUREMENT & MYPARTNERSHIP** - Disclosure of government contract procurements

Enhancement in the level of transparency and accountability in government and private procurement brought to the development of the MyProcurement and MyPartnership information web portals.

**MyProcurement** is the information hub on government procurements. Located at its web address <http://myprocurement.treasury.gov.my/>, the site was launched on April 1 2010 and contains information pertaining to tenders, such as tender pricing, advertisement dates, contract value and tender holders.

The MyProcurement portal is one of the major successes of NKRA - Fighting Corruption initiatives under GTP 1.0. The portal can be accessed directly by the public and serves as a one-stop site that will provide an umbrella view of all government e-procurement practices. It also helped increase transparency of Government procurement practices thus raising confidence in the Government tender process. The portal provides pertinent information such as advertised and awarded tenders and dates, values of contracts and winners of tenders. The list of procurement through direct negotiation will also be disclosed to the public. Through this enhancement, it is expected that public perception towards government procurement process will be significantly improved.

On the other hand, the **MyPartnership** portal, functioning under the Public Private Partnership Unit (UKAS), was launched on September 25, 2010 as a reference centre containing information on privatisation and procurement procedures.

#### **b) PRESENTATION OF AUDITOR GENERAL'S REPORT – Enables disclosure fraud in procurement timely**

The GTP 2.0 also witnessed the transformation in Auditor General's reporting process. This initiative enables disclosure of fraud in government procurement to be reported more speedily to relevant authorities.

Through this initiative, Auditor General's Report will be presented every time the Parliament meets, which is three times a year. Prior to this, the report is only presented once a year.

#### **AUDITOR GENERAL'S ONLINE DASHBOARD**

One of the NKRA - Fighting Corruption is the Auditor General's Online Dashboard. It was launched on May 30, 2013 by the Chief Secretary to the Government. The dashboard allows the public access to the status of follow-up action on the issues raised from the 2011 audit report onwards.

#### **b) PARAMETER FOR SUPPORT LETTERS**

Support Letters no longer has a place in attempting to influence the decision making process pertaining to Government approvals and applications. There is a clear guidelines in the circular issued by Malaysian Administrative Modernization and Management Planning Unit (MAMPU) that explains support letters are not to be accepted as approvals or supersede existing processes within government agencies in issuance of licenses, procurement, privatisation, fast tracking of approvals etc. This circular was issued on 2 April 2010 and circulated to all government departments/agencies throughout the country. With that, all approvals will be based on merits, fulfilled requirements, also subject to current procedures and regulations.

#### **c) SPECIAL CABINET COMMITTEE ON GOVERNMENT MANAGEMENT INTEGRITY (JKKMKPK)**

The Special Cabinet Committee on Government Management (JKKMPK) was established on 30th November 1988 due to raising concerns on the level of corruption in the Government sector.

On 2nd April 1997, the functions and roles of the JKKMPK were strengthened and the Committee was subsequently renamed the Special Cabinet Committee on Integrity of Government Management (JKKMKPK). The Malaysian Administrative Modernisation and Management Planning Unit (MAMPU) and the MACC were appointed as Joint Secretariat of the Committee.

The Committee aims to establish a Government administration and public service that is efficient, disciplined and imbued with the highest integrity by enhancing noble values. The Committee also focuses on efforts to overcome problems and weaknesses particularly in the Government financial management, public administration, handling of disciplinary cases, corruption, abuse of power and malpractices as prohibited by the regulation, law and religion.

All heads of departments were required to allocate sufficient budget to roll out comprehensive internal proactive programmes aimed to curb corruption and instil noble values. The programmes emphasise on creating a public delivery system of high integrity and in ensuring transparent, fast, effective, efficient and timely delivery.

#### **d) PUBLIC ACCOUNTS COMMITTEE (PAC)**

The Public Accounts Committee, appointed when a new Parliament session commences, examines the Auditor-General's report which has to be submitted to the Yang di-Pertuan Agong who then shall cause it to be laid before the House of Representatives, the Dewan Rakyat.

The report relates to the accounts of the federation and the States which have been audited by the Auditor-General. The PAC will identify areas in the report which warrants for explanations. The Chairman of the PAC may request relevant agencies or ministries to respond to queries of non-conformity raised in the Auditor-Generals report.

The PAC has an important role in initiating action on concerns expressed in the Auditor-General's report. Its task is to ensure that inefficiencies, as stated in the AG's report, at federal and state level departments and agencies are examined and investigated to ensure that such inefficiencies are not repeated year after year.

Members of the PAC comprise of a former Minister and the President of the Backbenchers Club as its Chairman and a member of the Opposition as the Deputy Chairman. Other members include three opposition MPs to form a comprehensive committee. The PAC must ensure financial accountability of Government agencies and departments.

### **15. Malaysian Anti-Corruption Commission Efforts:-**

The MACC which is empowered under Section 7 (c), (d) and (e) as its preventive functions has also implemented the following initiatives to curb corruption in public procurement:

**a) CORPORATE INTEGRITY PLEDGE MECHANISM – Pledge to uphold integrity in their organisations processes, procedures and policies**

The CIP is a document for corporations in Malaysia that engages companies to commit in upholding the Principles of Anti- Corruption. The CIP is a collaborative effort between the IIM and the MACC to engage corporate organisations to officially pledge to uphold integrity in their organisations processes, procedures and policies.

By signing the pledge, a company is making a unilateral declaration that it will not commit corrupt practices, will work towards creating a business environment that is free from corruption and will uphold the Anti- Corruption Principles for Corporations in Malaysia in the conduct of its business and in its interactions with its business partners and the Government.

CIP participants will pledge to:

- Promote the principle of transparency, integrity and corporate governance;
- Include anti-corruption elements to strengthen its internal procedures;
- Adhere to the anti-corruption law;
- Eradicate all forms of corruption; and
- Support the anti-corruption initiatives by MACC and the government.

#### **b) INTEGRITY UNIT – Ensure compliance towards good governance**

The Integrity Units are set up in every federal or state level public agency act as focal points in regard to integrity management issues of their respective agencies. This initiative to establish integrity units aims to curb criminal wrongdoings, as well as behaviour and ethics violations among civil servants besides strengthening good governance through internal control especially in the aspect of integrity.

Each Integrity Unit is responsible for executing the following six core functions:

- **Governance** - To ensure the implementation of good governance.
- **Strengthening integrity** - To ensure the culturalization, institutionalization and implementation of integrity in an organisation.
- **Detection and verification** - To detect and verify complaints regarding criminal wrongdoings, as well as behaviour and ethics violations; and
- To report criminal wrongdoings to relevant authorities.
- **Complaint Management** - Receive and take necessary actions on all complaints and information obtained relating to criminal wrongdoings, as well as behaviour and ethics violations.
- **Compliance** - To ensure compliance with laws and regulations in force.
- **Disciplinary** - To act as secretariat for the Disciplinary Board.

#### **SECONDMENT OF MACC OFFICERS IN EXTERNAL AGENCIES**

To perform the functions of Integrity Units, a total of 20 posts for upper middle management MACC officers are allocated for high risk agencies, while a total of 42 posts of lower-middle management MACC officers are allocated for medium risk agencies, both public and private agencies (GLCs). The existence of the MACC officers is to ensure the effectiveness of Integrity Units in monitoring the respective agencies.

#### **c) MONITORING MEGA GOVERNMENT PROJECTS**



The MACC monitors and provides advisory services on suitable practices, systems and work processes to public bodies that are implementing mega projects. Through the monitoring and advisory services, MACC provides information and guidance on ways and means to circumvent avenues and opportunities for corruption from the stages of planning to implementation and until the completion of the project.

A mega project is defined as a project with the following characteristics:

- Projects that involves a cost of RM500 million and above; and/or
- Projects that are of public interest that has an impact on the community, environment and its financial resources.

4% to 5% of information received by the MACC had involved corruption offences in the implementation of government development projects. Though the cases are a few, nevertheless, it is significant enough to create an impact on the confidence and perception of the public on the administration of government funds.

Delays, abandonment, increase in costs and leakages are among the effects of corruption on the implementation of mega projects in Malaysia. Projects such as the MATRADE Building project, the Kuching Prison in Sarawak, the collapse of the Terengganu State Stadium, the cracks in the Kuala Lumpur Middle Ring Road 2 (MRR 2) project and uncontrolled expenditures of the Port Klang Free Zone (PKFZ) project in Selangor are some example.

The monitoring activity was conducted with the setting up of a Committee on the Integrity of the Implementation of Mega Government Projects. The committee serves as a '*check and balance*' mechanism to ensure the level of integrity of all parties involved in the implementation of such large-scale government projects in order to prevent the occurrence of bribery, abuse of power and misappropriation; apart from leakages and wastage of public funds.

Subsequent to this, three working committees were formed as follows:

- i. The Committee on Land Acquisition – responsible to monitor the process of land acquisition and to identify the risks in the possibility of a manipulation in the compensation value of the land;
- ii. The Integrity Pact (IP) Committee – responsible to verify the IP prepared by the project owner/Project Delivery Partner (PDP)/contractor; and
- iii. The Communication and Education Committee – responsible to implement communication and education programmes for the participants involved in the implementation of mega projects in order to reinforce the aspect of integrity among them.

Currently, the Mass Rapid Transit (MRT) project in the Klang Valley, involving the construction of a railway network connecting the city with six areas which will benefit six million users, is being monitored. The MRT Project is estimated at RM36 billion and will be implemented in stages beginning mid-2011 and which will connect Serdang, Cheras, Kepong, Damansara, Subang Jaya and Puchong. The MRT project is one of five main programs of the Greater KL project that encompasses the capital city as well as satellite towns surrounding it. Gamuda Berhad and MMC Corporation Bhd (Gamuda-MMC) were selected as the joint consortium to implement the project