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Making Government Procurement Transparent

There is big business in government procurement. Governments purchase goods and services for their ministries and agencies, and they construct infrastructural projects that run into billions of dollars. Studies state that government procurement of goods and services is roughly 10-15 per cent of gross domestic product (GDP) for developed countries and that it could perhaps be more for developing countries. There are no definite figures of the value of government procurement in Malaysia. Estimates suggest that it would have been about RM38 billion for 2003. This seems to be a conservative figure considering that it is only 10 per cent of GDP for the same year.

There are several reasons why government procurement is a hotly debated topic. Firstly, the size of government procurement is, obviously, huge. Secondly, since public funds are involved in financing public procurement there is the question of accountability. Thirdly, government procurement is a market that attracts the interest of businessmen, including multinational companies. Finally, governments in developing countries have often been accused of not making the necessary purchases or procurements in the most efficient manner possible. Some estimates indicate that governments could save as much as 20 per cent of their expenditure costs by being more transparent and competitive in their procurement.

There is also an international dimension to government procurement since it is on the agenda of the World Trade Organisation (WTO). Malaysia, like India, has not signed the Agreement on Government Procurement (GPA). Nevertheless, Malaysia has not closed its ears completely to the question of government procurement at the WTO. Malaysia is a member of the Working Group on Transparency in Government Procurement.

One can understand why there is reluctance to commit oneself to a multilaterally binding GPA since it seems that the developed countries are using this agreement to gain market access. Nevertheless, at the national level, there are good reasons why Malaysia should work towards a more transparent government procurement policy. Many of these reasons are obvious. A more transparent system promotes efficiency. The threat of corruption is decimated. Transparency encourages a more competitive environment and as a consequence better quality for money from the consumers' point of view.

Media reports of flyovers with structural problems, schools and hospitals with cracks in their walls and the like are hardly comforting. Who is at fault if and when such incidents are highlighted? One can point one's finger at a variety of persons or positions and fault their decision-making. One may suspect that corruption or crony capitalism may have had a hand in the award of contracts.

But if one wanted to take a more 'foundational' view about the 'purchases' involved or of government procurement, then the prime object of reform must lie with the processes at work. Some of the most important answers must reside in the manner in which

government procurement is executed. Clearly, a more transparent system will allay fears and suspicions regarding the decision-making process.

Does Malaysia have an inadequate procurement framework at present? Perhaps, not. The procurement framework in Malaysia is made up of three main components: the agents involved, the legal and regulatory framework, and the tender process. Among the agents involved, the Federal government is the most important entity; the state governments and their respective departments come next in importance, followed by the local authorities. These entities have their guidelines to follow.

Following Malaysia's privatisation efforts starting in the 1980s, a large number of government-owned companies have been privatised. Consequently, the procurement that these companies undertake is not strictly government procurement. Nevertheless, the government-linked companies require government approval for purchases exceeding defined limits. For instance, Petronas, Tenaga Nasional and Telekom have to refer to the Ministry of Finance when procuring goods and services valued at or exceeding RM15 million.

Malaysia does have a good legal and regulatory framework. The Government Contract Act 1949 provides legal validity for the ministries to represent the Government in making procurements and the Financial Procedure Act 1957 outlines the mode of control and management of public finances. The latter lays out procedures for the collection and payment of public monies as well as procedures for the purchase, custody and disposal of public property. In addition, government procurements are regulated by treasury instructions, treasury circulars and central contract circulars.

The third, and perhaps most important element of any procurement framework, is the tender process. In Malaysia there are clear guidelines that govern the procurement process. One of the highlights of this process includes the fact that a tender process is called for whenever there is a purchase of goods, services or works exceeding RM50,000 in value.

There is preferential treatment for locally produced goods when they constitute up to 10 per cent of the value of contracts that are below RM10 million. For contracts that exceed RM100 million, preferential treatment will be extended if locally produced goods constitute up to three per cent of the value of contracts. Further, Bumiputera agents who make tender applications will be given preferential treatment for contracts valued between RM100,000 to RM15 million, but they will not receive such treatment for purchases exceeding RM15 million.

What then is of concern, if all the elements of a good procurement system are in place? Malaysia has a weighty decision to take since it uses government procurement as a socio-economic policy measure. There are fears that a loosening of the government's grip on procurement policy would deprive Bumiputera entrepreneurs of a safe window of opportunity. The other concern is to support certain domestic industries that depend on

government procurement in order to flourish. Greater competitiveness can be encouraged without foregoing social concerns in the first instance. Attempts can be made to inch towards a more open environment by promoting competition among Bumiputera enterprises through transparency in government procurement.

By making procurement more transparent there are real benefits to be gained in terms of efficiency, cost-effectiveness and even non-price gains (for instance, quality). Transparency can be improved by making information on contracts more easily available, by announcing the criteria on which contracts were awarded and by disclosing why bidders failed to qualify. Under certain circumstances, bidders and civil society should have the opportunity to question the wisdom that guided the selection of tenders.

Some observers have noted that Malaysia is not being viewed as a country that is as transparent as it should be. It has been pointed out that the practice of awarding large infrastructure projects on the basis of closed-door negotiations would erode public confidence and send the wrong message to the international business community.

Perceptions about a country's procurement system are often taken to be a reflection of that state of governance in that country. Malaysia is a small, open economy that is dependent on international trade and foreign direct investment. Hence, it would pay to progress towards disclosure and accountability in government procurement. Besides having ethical value, transparency in government procurement has its economic benefits, and that is something we cannot afford to ignore.