

POLICY IDEAS N° 7

Key failings in the Malaysian public procurement system and how they can be addressed by greater transparency

Professor David Seth Jones

Malaysia spends more than RM150 billion each year in procuring goods, works and services. This is equivalent to almost one-fifth of its nominal GDP. This percentage is higher than most OECD countries that spend about 12% of their GDP on procurement annually.

About the paper

The Malaysian government has established an official system of procurement which conforms to a certain extent to international standards. However, Auditor General Reports repeatedly highlight cases of procured goods, services and works that are being paid for well above market prices, under-utilised, and substandard. The paper argues that these problems may be caused by inadequate procurement planning and poor drafting of specifications, insufficient use of open competitive tendering and lack of monitoring and evaluation. The paper further argues that by putting more comprehensive transparency measures and addressing problems that have been hampering transparency initiatives such as political interference and continued use of direct negotiation, Malaysia will be able to address those problems and reap full benefit of transparent procurement system.

Among transparency measures specifically recommended by this paper are disclosure of procurement planning and non-performing contractors and suppliers, and allowing outside observers such as representatives from the Auditor General's Office or the Malaysian Anti-Corruption Commission (MACC), and relevant business organisations to attend procurement board meetings.

I. Introduction

Malaysia spends more than RM150 billion each year in procuring goods, works and services (MoF, 2012).¹ This is equivalent to almost one-fifth of its nominal GDP.² This percentage is higher than most OECD countries that spend about 12% of their GDP on procurement annually (OECD, 2011).³

The government stipulates that any procurement shall follow five key principles: public accountability, transparency, value for money, open and fair competition, and fair dealings. However, the Auditor General Annual Reports repeatedly suggest that such principles have not been fully adhered to. Every year the report highlights cases of procured goods, services and works that are being paid for well above market prices, under-utilised, and substandard.

This paper will discuss key failings in the government procurement system that may contribute to these problems and how the improvement in transparency will help to address them.

2. Malaysia's procurement system: a short overview

The Malaysian government has established an official system of procurement which conforms to

a certain extent to international standards. The process is regulated by the Financial Procedure Act 1957, and the Government Contract Act 1949. The methods of procurement, procedures to be followed and the guiding principles are laid down in the Treasury Instructions, supplemented by Treasury Circulars. These instruments apply to procurement by all federal and state governments, local authorities within the states and statutory bodies (which are semi-government

agencies). They do not apply to state-owned companies (see Table 1).

Procurement responsibilities are undertaken by line agencies at the federal level (ministries and statutory bodies), under the general oversight of the Government Procurement Division in the Ministry of Finance. Procurement is also undertaken by departments in the state government and also state-owned statutory bodies, as

Table 1: Procurement-related laws and regulations

LAWS/REGULATION	DESCRIPTIONS
Financial Procedures Act 1957	The act outlines procedures for the collection, custody, and payment of the public monies and procedures for the purchase, custody and disposal of public property and related matters.
Government Contract Act 1949	The act empowers ministers in their respective ministries to enter into contracts and delegate powers to government officers to enter into contracts on behalf of government.
Treasury Instruction	The document outlines in detail financial and accounting procedures and regulations that have to be followed in managing and using public funds including procurement.
Treasury Circulars	The circulars are issued from time to time to inform, clarify, implement, improve and amend certain policies, rules, and procedures regarding the management and use of public money.
Federal Central Contract Circulars	The circulars are issued to outline several items that are decided to be centrally purchased.

1 This sentence has been edited.

2 This figure was reached by adding the total federal government expenditure for supplies and services to its development expenditure and the development expenditures of local government, state government, statutory bodies, and non-financial public enterprises. NFPEs are included in the calculation because they are wholly owned by government and therefore all expenditures come from government. The calculation of procurement expenditure was based on the method adopted by Christopher McCrudden and Stuart G. Gross: see their paper 'WTO Government Procurement Rules and the Local Dynamics of Procurement Policies: A Malaysian Case Study', The European Journal of International Law, Vol. 17, No. 1, 2006, pp. 151-185.

3 The calculation of procurement market of OECD may sometimes exclude expenditures of state owned enterprises, but where available, they are included "to better approximate the size of procurement markets". Available at http://www.oecd-ilibrary.org/sites/gov_glance-2011-en/09/01/index.html;jsessionid=4c3jn1552kldr.x-oecd-live-02?contentType=/ns/StatisticalPublication,/ns/Chapter&itemId=/content/chapter/gov_glance-2011-46-en&containerItemId=/content/serial/22214399&accessItemIds=&mimeType=text/html.

well as by local councils within the states (Wee et al, 2011; Skrine, 2012; Ministry of Finance, 2013).

For low value procurement, direct purchasing from a chosen supplier or competitive quotations from at least five suppliers are adopted. In high value purchases, open tenders are conducted, but with provision for direct contracting (that is single sourcing) in certain special circumstances (see Table 2).

For direct purchases, procurement officers in each department/ agency are allowed to procure needed items from any contractor or supplier that is known to offer reasonable prices. However, if the items are included in the list of items purchased centrally, they have to use panel contracts that have been chosen by the federal government.

A Quotation Committee (*Jawatankuasa Sebut Harga*) appointed by the head of agency/ department is responsible for choosing contractors or suppliers (who are registered as government suppliers/contractors) to supply

items procured through quotations. These contractors/suppliers are invited by the procurement unit of the agency/department to submit quotations. The unit can also advertise the call for quotations on their website or information board for seven days to get quotes from other registered suppliers. The submission will then be evaluated by technical and financial committees and submitted to the Quotation Committee for the final decision.

For items procured through tenders, agencies have to advertise the tender in local newspapers and/or on one of the procurement portals. The bidding period for tenders that target local suppliers is 21 days. For international tenders, which arise only for goods and services that are not available locally, the bidding period is 56 days. For each tender, a tender opening committee, comprising senior government officials, opens and records the bids from registered companies. A technical committee and financial committee then evaluate the technical and financial aspects of the bids according to the scoring

system. These committees then report to the Agency Procurement Board (*Lembaga Perolehan*) who will make the final selection. The Agency Procurement Board, however, is only allowed to make decisions on tenders with values of less than RM50 million for supplies and goods, or less than RM100 million for works. Above that amount, the final decision must be made by the Ministry of Finance. After the selection process is completed, the agency/department will then produce a letter of intent to award a contract to the selected contractors or suppliers.

3. Key failings

To a significant extent, the procurement undertaken in everyday practice is in accordance with the provisions laid down in the Treasury Instructions and Circulars. Nonetheless, there are aspects of the procurement system, which, in practice, fall far short of the expected standards. Practices are followed which deviate from the provision in the Treasury Instructions and Circulars, or arise with equally harmful consequences as a result of gaps and ambiguities in the Instructions and Circulars. The following are some key failings that may lead to problems mentioned above.

i. Inadequate procurement planning and poor drafting of specifications

It is appropriate for government agencies to plan a list of intended procurements for the forthcoming financial year and for each procurement a detailed project draft. An annual procurement schedule drawn up by an agency at the outset of the financial year

Table 2: Type and method of procurement

TYPE OF PROCUREMENT	METHOD OF PROCUREMENT		
	Direct Purchase	Quotation/ Closed Tender	Open Tender
Goods and Services	Items with value below RM 20,000/year	Items with value between RM20,000 – 500,000	Items with value more than RM500,000
Works	Items with value below RM 50,000/year	Items with value between RM50,000 – 500,000	Items with value more than RM500,000

indicates the goods, services and works it intends to procure within the allocated capital and operating budget.

This serves two purposes. Firstly, it enables the agency to align its intended procurements with its policies and the range of goods available. Secondly, suppliers and contractors can take the necessary preparatory steps to acquire the relevant knowledge to enable them to submit a comprehensive bid and to ensure time and resources are available to undertake the contract.

Advertising the detailed planning of the project before the procurement is essential. This includes, amongst other things, establishing the need for the procurement, drafting relevant specifications and award criteria, choosing the appropriate procurement method, preparing the necessary tender documents, setting a budget ceiling and undertaking research on market prices and on the availability of goods and services required and of suitable suppliers and contractors. Also part of the plan is the preparation of a system for monitoring, supervision, and cost control and for providing the necessary coordination where there are two or more departments or units which are to be the end users.

However, not all agencies draft annual procurement plans. The Auditor-General (AG) in the preface to his 2011 main report indicated that ‘programmes/projects and scopes/specifications were not planned and identified properly’ (AG, 2012a). Likewise, he prefaced his findings of the audit of statutory bodies, by referring to a ‘lack of meticulous planning on projects/activities and in determining the scope and specifications of tenders’

(AG, 2012b). This was also revealed in the audit reports of the accounts of several states.

The main report amongst others identified weaknesses in the project plans in the construction of Sultan Yahya Petra Second Bridge, Kota Bahru, Kelantan, under the Ministry of Works, in the construction of quarters, stations and offices for the Meteorological Department, and in the Upgrading Tourism Facilities Programme under the Ministry of Tourism. The report on statutory bodies singled out three authorities, Malaysian Rubber Board, Putra University of Malaysia and Forest Research Institute where proper planning of procurement for infrastructure development, facilities and equipment was required (AG, 2012a; 21012b).

ii. Insufficient use of open competitive tendering

It is generally recognised that a competitive procurement market based on open tendering is the best guarantee of value for money for government agencies and the public at large, in terms of both price and quality of the goods, services and works procured. However, the use of open tenders especially in high value procurements has not been as frequent as would be expected, due to the adoption on occasions of direct contracting and negotiation (Wee et al, 2011). It should also be mentioned that direct contracting may create opportunities for bribery and corruption.

The AG’s report in 2011 highlighted and expressed serious misgivings about several instances of procurement through direct negotiation. One was the maintenance, restoration and

...not all agencies draft annual procurement plans. The Auditor-General indicated that ‘programmes/projects and scopes/specifications were not planned and identified properly.’

repair of building facilities and surroundings in the Federal Court Complex in Kuala Lumpur. One company was appointed through direct negotiation without a tender. The contract was to initially extend over three years (2007-2010), but was further extended for another two, costing an aggregate of over RM50 million. The report identified several weaknesses in the maintenance work and the administration of the project, noting, amongst other things, that 'physical performance of maintenance works was unsatisfactory since there were cracks and leakages in the buildings' (AG, 2012a).

iii. Lack of monitoring and evaluation

Another problem in the procurement process is the failure by suppliers to deliver goods in accordance with specifications which result in the goods received being sub-standard and less useful than they should have been.

This is compounded by the failure of procurement officials to issue purchase orders and of suppliers' to issue invoices, which did not spell out the specifications. In addition, the AG noted that the goods received in some cases were not checked against the specifications required.

A few examples may be given. The AG reported in 2011 that the Enforcement Division of the Royal Malaysian Customs Department (RMCD) receiving officers 'could not confirm the specifications and quality of working tools received', as relevant information (such as brand,

model and specification) was not stated in the catalogue, invoice or Local Purchase Order' (AG, 2012a). In the procurement of equipment by the Ministry of Education for vocational subjects at technical/vocational secondary schools, 139 units of equipment worth RM2.21 million did not follow specifications. In the Forest Research Institute Malaysia, the supply of laboratory equipment 'did not meet the specifications in the Agreement', but were nonetheless still accepted (AG, 2012a).

Equally serious were the frequent references made in the AG's reports to non-compliance by contractors to design and materials specifications, often resulting in low quality workmanship and poorly constructed facilities. This was in part attributed to the lack of proper supervision of the project during the period of construction and the absence of any evaluation of the performance of the contractor. An example was the construction of an electrified double track rail link from Ipoh to Padang Besar, at a cost of RM12.5 billion, in which the AG found 'did not comply with specifications' and was of 'low quality' (AG, 2012a). A similar problem arose with the upgrading of the rail link between Seremban to Gemas. The construction of quarters, stations and offices by the Meteorological Department was also beset by poor compliance with specifications and was of low quality. A sample of the 846 projects to build and upgrade tourist facilities under the auspices of the Ministry of Tourism found that construction works and supplies 'were not

according to specifications and of low quality/not fulfilling tourism requirements' (AG, 2012a).

In these and many other cases part of the problem was poor monitoring of the project by the project consultant or supervisory officers and the lack of contractor evaluation. As noted in the AG's 2011 report, the tourist upgrading project mentioned above was caused by 'ineffective project monitoring'. In another tourist and wildlife project, the Rhinoceros Breeding Project at Lahad Datu, Sabah, despite the low quality of the construction work, no evaluation of the contractor's performance was carried out (AG, 2012a).

4. Improving transparency can address these failings

Many of the failings identified above persist due to the lack of transparency in the procurement process.

There are several features of a transparent procurement system. They include publicising laws, regulations and instructions governing procurement, widely advertising tenders and quotations, disclosing the budget ceiling, publicly announcing the method of procurement (e.g. quotation international open tender etc.).

Publicly published comprehensive tender documents is also another measure of transparency.¹

Equally important is disclosure of the criteria by which technical and price proposals are evaluated,

¹ The documents should provide a detailed listing of specifications relating to the type of product to be procured, its functionality, components and accessories, and also supplier guarantees, and for public works specifications relating to scope of works, design, materials, excavation, site management, and project schedule.

including the weightages given to each, as well as the importance attached to a company's track record, professional expertise, accreditations, and financial health.

A further aspect of a transparent procurement system is the announcement of the company awarded the contract, and contract value, with reasons for the award sent to other tenderers. In public works projects, records should be kept of the progress of the contractors and a formal evaluation undertaken of the contractors' performance. Lastly, names of contractors who are debarred should be disclosed and the reason for the debarment given.

Malaysia has exercised some degree of transparency and progress has been made in recent years in creating a more transparent system of procurement. A positive development has been the adoption of an e-procurement system in which information about tender and quotation notices and results are provided, and where suppliers and contractors can download necessary documents for tenders and upload bid submissions. To date, there are at least four portals providing these services. They are E-perolehan, Myprocument, NeTI and e-Perunding.

However, there are aspects within the procurement system that continue to undermine transparency. One is the continued use of negotiated procurement without any open bidding. The negotiation with a single supplier and contractor is often undertaken behind the scenes and there is no way of telling why the company in question was preferred, whether its track record, financial health and

level of expertise were considered, and whether the work scope, and specifications drafted by the procuring agency were modified and what the contract details were.

Even when open bidding is adopted, the agency procurement board meets in closed session and there is no knowing what factors determine the evaluation and contract award. There is always the chance that decisions are made in evaluating and selecting a tenderer without due regard to achieving value for money with respect to quality of the technical proposal, price offer and company background (track record, financial health, professional expertise, and accreditations). Unlike the Philippines, no outside observers attend the meetings at the evaluation and contract award stages such as a representative from an official watchdog organization (e.g. the AG's Department or the Malaysian Anti-Corruption Commission) and a representative from a relevant and reputable business or professional association. Such attendance could enhance the transparency of the deliberations that determine the contract award.

The lack of transparency has been exacerbated by political interference in the procurement process. Evaluation and contract awards have been all too often influenced by lobbying by politicians, reflecting often vested interests to which they are connected. The politicians may be Ministers, Members of Parliament and the Senate, Ministers in State Governments and Members of State Assemblies. The intention is to persuade or exert pressure on Procurement Boards to award a contract to a particular company either through direct negotiation or

by by-passing the normal processes and evaluation criteria in bid selection. The most common form of lobbying has been the so-called 'support letters' which are sent to procurement officials, especially at the senior level, requesting that favourable consideration be given to a particular company in a procurement exercise (Wee et al, 2011; PEMANDU, 2011; 2012).

Transparency is the core principle of high quality public procurement. An open and transparent procurement process increases efficiency, reduces the possibility of unfairness or corruption and improves competition. A robust transparency regime enables people to hold public institutions and politicians accountable. It is through this that transparency helps to instil public trust in public institutions.

Malaysia needs to continue improving the transparency of its procurement system by putting in place more measures to address the key failings as outlined above and to remove impediments to reform, which thereby would eventually lead to greater public accountability. Only then, will the country reap the full benefits of transparency.

References

- Auditor-General 2012a, *Synopsis of the Auditor General's Report for the year 2011 on the Audit of the Federal Government's Financial Statement, Financial Management, Activities of the Federal Ministries/Departments and Management of the Government Companies*, Putrajaya: National Audit Department.
- Auditor-General 2012b, *Auditor General's Report on the Audit of Financial Management and Activities of Federal Statutory Bodies and Management of Subsidiary Companies, for the year 2011*, Putrajaya: National Audit Department.
- Economic Planning Unit 2010, *The Tenth Malaysian Plan, 2011-2015*, Putrajaya.
- Jones, D. S. 2013, 'Reforming Public Procurement in the Philippines: Progress and Constraints,' *International Journal of Public Sector Management*, vol. 26, no. 5 (2013): 375-400.
- Ministry of Finance 2011, *Economic Report 2012/2013*, Putrajaya: available at http://www.treasury.gov.my/index.php?option=com_content&view=article&id=2281:laporan-ekonomi-20122013&catid=73:senarai-laporan-ekonomi&Itemid=174&lang=en.
- National Economic Advisory Council 2011a, *New Economic Model for Malaysia Part 1*, Putrajaya.
- National Economic Advisory Council 2011b, *New Economic Model for Malaysia: Final Part*, Putrajaya.
- OECD, 2011, *Size of public procurement market*, available at http://www.oecd-ilibrary.org/sites/gov_glance-2011-en/09/01/index.html?contentType=/ns/StatisticalPublication,/ns/Chapter&itemId=/content/chapter/gov_glance-2011-46-en&containerItemId=/content/serial/22214399&accessItemIds=&mimeType=text/html.
- Performance Management and Delivery Unit 2011, *Government Transformation Programme Report: Annual Report, 2010*, Putrajaya.
- Performance Management and Delivery Unit 2012, *Government Transformation Programme Report: Annual Report, 2011*, Putrajaya.
- Performance Management and Delivery Unit 2013a, *The Economic Transformation Programme: Annual Report, 2012: Public Finance Reform*, Putrajaya.
- Performance Management and Delivery Unit 2013b, *Government Transformation Programme: RoadMap 2.0*, Putrajaya.
- Skrine 2012, *Public Procurement Malaysia*, Kuala Lumpur: Lex Mundi.
- TI-Malaysia 2011, *Newsletter*, vol. 22 no. 2 (Jul – Dec).
- Transparency International 2012, *Corruption Perception Index, 2012*, Berlin: Available at <http://cpi.transparency.org/cpi2012/results/>.
- Transparency International 2013, *Global Corruption Barometer, 2013*, Berlin: Available at <http://www.transparency.org/gcb2013/results>.
- Wee Shu Hui, Radiah Othman, Normah Hj Omar, Rashidah Abdul Rahman and Nurul Husna Haron 2011, 'Procurement Issues in Malaysia,' *International Journal of Public Sector Management*, vol. 24 no. 6: 567-593.
- World Bank (2012), *Governance Indicators, 2011: Control of Corruption*, Washington DC, available at: <http://www.worldbank.org/wbi/governance>.
- World Economic Forum 2012, *Global Competiveness Report, 2012-2013*, Geneva.

About the author

Professor David Seth Jones was previously a member of staff of the Faculty of Business, Economics and Policy Studies, University of Brunei Darussalam, the Department of Political Science, National University of Singapore, and Adjunct Professor, School of Economics, Singapore Management University. He has also been Program Director for Master of Public Administration Program, Australian National University/Civil Service College, Singapore. He is currently a policy and management consultant in Southeast Asia. His specialisms are public procurement, infrastructure financing, public management and finance, and land policy, in which areas he has published extensively. He has undertaken a wide range of consultancy research and training in these areas as well. Professor Jones was awarded his PhD by Queen's University of Belfast in 1978. His email contact address is dsjones1x@gmail.com.

