

**Asia-Pacific
Economic Cooperation**

**APEC Workshop on
Government Procurement Practices**

14 – 18 July 1999

Kunming, Yunnan, China

APEC Committee on Trade and Investment (CTI)

July 1999

**Agenda for APEC Workshop on Government Procurement Practices
Kunming, Yunnan, China, 14-18 July, 1999**

July 14	Wednesday
08:30—09:30	Registration
09:30—10:00	Opening Ceremony
10:00—10:20	Photo Session/Coffee Break
10:20—10:30	Adoption of the Agenda
10:30—12:30	General Introduction on the Government Procurement Practices Moderator: Mr. Yi Xiaozhun, Deputy Director-General, DITEA, MOFTEC Speaker: Mr. Bertrand Ah-Sue, World Bank Resident Mission, Beijing
12:30—13:30	Luncheon
14:30—15:45	Stage I Preparation for Procurement Moderator: Mr. Bertrand Ah-Sue, World Bank Resident Mission, Beijing Speaker: Ms. Susan Elizabeth Alesi, Executive Office of the President, U.S.A.
15:45—16:00	Coffee Break
16:00—17:00	Stage I (continued)
17:00—17:30	Open Discussion
18:30—20:00	Reception hosted by the Ministry of Foreign Trade and Economic Cooperation and Yunan provincial government
July 15	Thursday
09:30—10:45	Stage I (continued) Moderator: Ms. Susan Elizabeth Alesi, Executive Office of the President, U.S.A. Speaker: Mdm. Hajjah Kamesah Abu Bakar, Ministry of Finance, Malaysia
10:45—11:00	Coffee Break
11:00—12:00	Continued
12:00—12:30	Open Discussion
12:30—13:30	Luncheon
14:30—15:45	Stage II Implementation of Procurement Moderator: Mdm. Hajjah Kamesah Abu Bakar, Ministry of Finance, Malaysia Speaker: Mr. Jim Glynan, Parliamentary Service, New Zealand
15:45—16:00	Coffee Break
16:00—17:00	Continued
17:00—17:30	Open Discussion
July 16	Friday
09:30—10:45	Stage II (continued) Moderator: Mr. Jim Glynan, Parliamentary Service, New Zealand Speaker: Mr. Bertrand Ah-Sue, World Bank Resident Mission, Beijing
10:45—11:00	Coffee Break
11:00—12:00	Continued
12:00—12:30	Open Discussion
12:30—13:30	Luncheon
14:30—15:45	Stage III Fulfillment of Contract and Project Evaluation Moderator: Mr. Nigel Shipman, Director, Government Supplies Department, HK, China Speaker: Mr. Peter Bennett, HM Treasury, U.K.
15:45—16:00	Coffee Break
16:00—17:00	Continued
17:00—17:30	Open Discussion
19:00—20:30	Yunan Folk dancing
July 17	Saturday
09:30—10:45	Stage III (continued) Moderator: Mr. Peter Bennett, HM Treasury, U.K. Speaker: Mr. Koh Kok Kiang, Ministry of Finance, Singapore
10:45—11:00	Coffee Break
11:00—12:00	Continued

12:00—12:30	Open Discussion
12:30—13:30	Luncheon
14:30—15:45	Stage IV New Method and Future Development Moderator: Mr. Koh Kok Kiang, Ministry of Finance, Singapore Speaker: Mr. Nigel Shipman, Director, Government Supplies Department, HK, China
15:45—16:00	Coffee Break
16:00—17:00	Continued
17:00—17:30	Open Discussion
July 18	Sunday
09:30—10:30	Free Discussion Topic: WTO Future Negotiation on Government Procurement Moderator: Mr. Yi Xiaozhun, Deputy Director- General, DITEA, MOFTEC
10:30—10:45	Coffee Break
10:45—11:15	Summary Report
11:15—11:30	Closing Session
11:30—12:30	Luncheon
12:45	Excursion to International Horticultural Expo, Kunming 99

Program for Government Procurement Workshop

14-18 July, 1999, Kunming, China

Simulation Case: National Laboratory Construction Project

Background: Sanritoria is an economy located at the APEC region. It has little experience in internationally recognized GP operations but is willing to introduce the whole process.

Assume the Central Government is going to build a national laboratory for a scientific research project. Information is as follows:

Fund: 55% of the total needed funds is from national budget, 30% from Construction Bank and 15% from a scientific fund.

Procuring Requirements: master designer, civil engineering contractor, supervisor and equipment.

Other information: Two sets of needed equipment with estimated value at US\$ 5 million each can only be manufactured by two companies. One installation which is around US\$ 1.9 million should be ordered under 6 separate contracts in one year according to the progress of plan and amongst which 3 contracts value less than US\$100,000 . Two mainframes can only be produced by economy A which has restriction on export.

Requirement: Based on the above scenario, speakers are expected to consider what exact steps should be taken to accomplish the simulated procuring mission in line with the principles recently adopted by GPEG. Questions have been raised under four different stages according to the sequence of the simulated procurement. Each speaker is expected to give presentation on one stage of procurement procedure. Each of first three stages will have two speakers. After the presentation of each stage, the workshop will be followed by Questions and Answers.

Stage One: Preparation for procurement

Topic 1: **Development of GP law**

Q1: What are the main components of the GP law?

Q2: How does the GP law help achieve the social and economic objectives?

Q3: What are the responsibilities of the GP line ministry?

Topic 2: **Budget and evaluation**

Q1: What is the procedure of the government entity to apply for the national budget for the procurement?

Q2: What the procedure of ratification would be? How to accurately evaluate the budget? Is it necessary to consult with the Scientific Fund?

Topic 3: **Composition and responsibilities of procuring entity**

Q1: How should the procuring entity be composed of and what are its responsibilities? Is it necessary to include all the parts that have provided fund for the project?

Q2: What are the criteria for qualifying procuring officials at different levels?

Topic 4: **Selection of procuring method**

Q1: Since it is a mixed-funded project, each investor has its own requirements for procurement. If the assumed procurement can not be divided into appropriate portions as that of the fund are composed of, how to deal with this problem? How does each investor supervise the whole process of procurement?

Q2: In the given situation, there are goods, engineering and service procurements. How to select the most appropriate procurement method for each procurement/sub-procurement? What is the most acceptable threshold for goods, engineering and service respectively?

Q3: Based on the information given, how to select the most proper method for procuring equipment, installation and mainframe respectively?

Q4: What is the best method for small procurement? Under what circumstances could the request for quotation be used?

Q5: Is the two-stage tendering applicable to this case? If yes, how to proceed it? If not, then in what situation could it be used?

Q6: Under what circumstances could the negotiation tendering be used? Suppose the procuring entity realizes that some company is the most ideal supplier, is it possible for the procuring entity to invite the company to bid?

Q7: How to forecast and pre-warn the risks that might arise from the selected method?

Q8: For developing economies, such as Sanratoria, GP could be a main stimulation for the government to achieve its economic and social objectives. In the preparing stage, how to select the procuring method to promote the development of domestic industries through GP while the cost for preference margins could be at the minnum?

Stage Two: Implementation of Procurement

Topic 1: **Prequalification proceedings**

Q1: Under what circumstance is the prequalification needed? How to proceed the prequalification?

Q2: By which body the criteria of the qualification would be set up? If a supplier fails to get the access to the tendering, is it possible for him to appeal against the discriminatory treatment? If yes, to whom should the supplier appeal?

Q3: Should the prequalification documents be provided to all interested suppliers? What information should be included in the documents?

Q4: What is the reasonable timetable of prequalification?

Topic 2: **Solicitation of tenders**

Q1: What are the contents of solicitation documents? How could the information be best available to the public?

Q2: In non-English speaking economy, could the documentation be made in its own official language in the international tendering? Are there any requirements in the law on this specific issue?

Q3: In what case should there be a bottom price and how to develop the bottom prices for the goods, engineering and services?

Q4: Does the procuring entity have the right to modify the solicitation documents after published? Is there any restriction on the modification?

Topic 3: **Tendering proceedings**

Q1: How does the supplier or contractor deliver the tender to the procuring entity? How to deposit the bid bond?

Q2: After submission of tenders, is it possible for the tenderer to clarify, modify or withdraw the tender? If yes, should there be any restrictions on clarification, modification and withdrawal?

Q3: If prequalification or two-stage tendering are used, there are less than 3 qualified tenderers, could the tendering still proceed and how?

Q4: If the tendering terminates due to the collusion of several tenderers, who should be responsible for it? Is it necessary to compensate other tenderers for loss? If yes, then compensate by whom? Is there any stipulation in the law?

Q5: Under what circumstance could the procuring entity reject all or some of the tenders? Should the procuring entity be responsible for the any consequences caused by rejection?

Q6: Under what circumstance could the procuring entity suspend the tendering? If the suspension time exceeds the validity of tenders, how to deal with it?

Topic 4: **Opening of tenders**

Q1: What is the reasonable period of time from the closing tendering to opening tenders?

Q2: Under what circumstance could there be secret opening? If it is a public opening, what should be included in the declaration?

Q3: Is it allowable for the tenderer to withdraw the tender if he finds his quotation too low after the opening? If it happens, will the tender be punished?

Topic 5: **Evaluation and comparison of tenders**

Q1: What are the principles of the evaluation? Should these principles be declared in the solicitation documents?

Q2: According to the international practice, who should be in charge of evaluation? Are there any necessities for setting up an evaluation committee? If yes, how many members should the committee have and what are the qualifications for them? What is the responsibility of each committee member? Is it necessary to keep the composition of the committee as a secret before the opening of tendering?

Q3: Is it possible for the tenderers to make clarification and modification at the evaluating stage? Could the procuring entity or the evaluation committee have negotiations with tenderers at this stage?

Q4: If the committee have different opinions on the evaluation, how to make the decision?

Q5: If the unfairness or suspension of evaluation caused by the intervention of the government officials, do the procuring entity or the tenderers have rights to make an appeal? If yes, then to whom?

Q6: If the law permits, how could the preference margins be taken into account at this stage?

Topic 6: **Award of the contract**

Q1: How does the procuring entity conduct the lowest tender or the most advantageous tender? Assume there are two installations, one is of famous brand and the other is a general one, and both of them can meet the procurement requirements. But the price of the former is 3% higher than that of the latter. In this case, how to make the decision?

Q2: Should the decision on the award of the contract be reviewed? If yes, then by whom?

Q3: Should the outcome of an award be published? If yes, what contents should be included in the public notice of the award of the contract?

Q4: When the lowest price is pursued and the contract is awarded to the lowest tender, how could the procuring entity remedy if the total or part of the offered price then turns out to be too low to be reasonable?

Topic 6: **Signature of contract**

Q1: How many types of contracts are there? What are the applicable scope and contents of each type of contract?

Q2: Is the contract law applied to government procurement contract? Is there any contract law on government procurement? What are the main contents of it?

Q3: What is the appropriate duration between the declaration of award and the signature of contract?

Q4: In the given situation, who will sign the contract?

Q5: Is it necessary for the winning tenderer to deposit a performance bond? If so, then how?

Stage 3: Fulfillment of contract and project evaluation

Topic 1: **Fulfillment of contract**

Q1: Under what circumstance could the procuring entity terminate or rescind the contract?

Q2: What could be regarded as the Force Majeure and how to deal with it if it happens?

Q3: In the construction procurement, how could the procuring entity ensure that the whole process of the conduct meets the criteria of the contract/procurement requirement?

Q4: Could the contract be modified in this stage?

Q5: If one contractor breaches the contract or loses the capacity of fulfillment, how could its counterpart be compensated?

Topic 2: **Inspection and acceptance of supply**

Q1: Who would be in charge of inspection and acceptance? Should there be a special inspecting body?

Q2: If a supplier or contractor fails to meet the criteria of the procurement requirements, what could the procuring entity do?

Topic 3: **Settlement and registration**

Q1: What should be taken into account when making the settlement?

Q2: Who should make the payment, the procuring entity or the national treasury?

Q3: Since the procurement made by the government will finally become the state-owned properties, how will the body in charge of state-owned properties register the procured properties and manage them?

Topic 4: **Post-evaluation of project**

Q1: Who would be in charge of post-evaluation?

Q2: What should be the main contents of post-evaluation?

Q3: What will be the effects of post-evaluation result?

Stage 4: New method and future development

Q1: How would this procurement proceed if the information tendering is introduced?

Q2: What is the future development of tendering method?

APEC
Government Procurement Workshop
Kunming, China
July 14 to 18, 1999.
Introductory Address

by
Bertrand Ah-Sue, RMC, World Bank

1. Background

2. Overall Considerations.

- Use of Public Funds
- Need to define rules
- Need to apply them
- Need to establish follow-up and supervision

- Need to provide equal treatment to APEC members

3. Basic Considerations

- Economy and efficiency
- Equal opportunity to eligible bidders
- Transparency in the procurement process

4. Procurement process

- Competitive bidding should be the norm
- Other methods possible for small value or exceptional circumstances

5. Competitive bidding

- Advertising
- Bidding documents
- Time for bid preparation
- Clarification
- Bid submission deadline
- Bid opening
- Bid examination

- Bid clarification
- Bid evaluation
- Contract award
- Pre and postqualification
- Guarantees, securities

6. Government regulations

- Written rules covering
 1. Scope
 2. Responsibilities
 3. Procedures
 4. Supervision
 5. Audit

Government Procurement Procedures

Stage II: Implementation of Procurement

Topic 1: Prequalification

- When is prequalification needed?
- How to carry out prequalification?
- What are the criteria? Pass/Fail method
- Who should be invited?
- What is the reasonable time?

Topic 2: Solicitation (advertising) of tenders

- How to advertise?
- What information to provide?
- Use of National Language for International Tendering??
- What are the requirements of the Law?
- Bottom price? Goods, works and services?

- Modification after solicitation
(advertising/tendering??)
- Is there any restriction on modification?

Topic 3: Tendering Proceedings

- Delivery of tender
- How to deliver the Bid bond?
- Clarification – possible after submission?
- Modification, withdrawal?
- Less than 3 tenders –
prequalification/tendering?
- Collusion – who should be responsible?

- Compensation? Necessary? Provision of the Law?
- Rejection of tenders?
- Suspension of tendering?

Topic 4: Opening of tenders

- Reasonable period between closing and opening of tenders/
- Secret opening?
- Public opening – what to declare?
- Withdrawal after opening?

Topic 5: Evaluation of Tenders

- Principles (bid evaluation criteria?) of evaluation.
- Principles defined in tender documents?
- Who in charge of evaluation?
- Members and qualification?
- Composition Secret before tendering?

- Clarification, modification, negotiation after opening of tenders?
- Different opinions?
- Interference of Government officials?
- Preference margins?

Topic 6: Award of contract?

- Lowest/advantageous tender?
- Famous brand?
- Review of decision? By whom?
- Award outcome – published?
- What should be the contents?
- Lowest bid – too low?

Topic 7: Signature of contracts

- How many types?
- Scope and contents?
- Is contract law applied to Government procurement?
- Duration between award and signature?
- Who will sign?
- Performance bond necessary?

ASIA-PACIFIC ECONOMIC COOPERATION
WORKSHOP ON GOVERNMENT PROCUREMENT PRACTICES
JULY 14-18 1999, KUNMING, CHINA

PROGRAM FOR GOVERNMENT PROCUREMENT WORKSHOP

GENERAL

The US has developed over the last 30 or 40 years an intricate set of procurement rules that are based primarily on law. These rules represent what we consider good business sense and are also reflective of our social and economic policy. In addition the US as a member of the World Trade Organization (WTO) and a signatory to the WTOs Agreement on Government Procurement has agreed to such fundamental principles as transparency in our laws, regulations, procedures and practices regarding government procurement.

The following is a discussion of the preparatory stage of our simulation project. Although the discussion will center on a *construction procurement*, many of the preparatory requirements in US procurement rules are equally applicable to procurements for supplies and services. The questions have been addressed from purely the perspective of a Federally (centrally) funded procurement. The answers, therefore, reflect procurement procedures at the Federal (central) level

STAGE ONE: PREPARATION FOR PROCUREMENT

TOPIC 1: Development of Government Procurement Law

QUESTION 1: What are the main components of the government procurement.

Procurement Planning

- Statement of Need - include capability or performance
- Estimated Cost
- Delivery Period
- Competition
- Source Selection Procedures
- Contract type
- Budgeting and funding

Specifications, product or service description
Test Program
Government furnished Property
Environmental Concerns
Security Concerns
Contract Administration

Development of Invitation to Participate in Procurement

Statement of Work	Contract Clauses
Specifications	Delivery Period
Data Requirements	Place of Delivery
Approvals	Method of Payment

Issuance of Invitation to participate in Procurement

Issuance of Solicitation

Receipt of Tenders

Evaluation of tenders

Award of contracts

Debriefing of unsuccessful tenderers

QUESTION 2. How does the government Procurement law help achieve social and economic goals?

Government procurement rules require compliance with certain social and economic programs as a condition of doing business with the government. Some of those programs are:

- small business set-asides: the purpose of this program is to award certain procurements to small business concerns. A set-aside is the reservation of a procurement exclusively for participation by small businesses. Each procurement that has an estimated value between \$2500 and \$100,000 is automatically set reserved exclusively for small businesses concerns unless the contracting officer believes that there are no small businesses that are competitive.
- labor standards: dictates terms and conditions of employment to include wages for employees of contractors under certain types of contracts.

-equal employment opportunity requirements: prohibits contractors from discriminating based on sex, race, color, religion, national origin and disability.

- drug free workplace: requires contractors to maintain a drug free awareness program.

- environmental policies: (1) requires contractors to avoid performance processes that cause pollution; (2) encourages contractors to rely on environmentally sound products to include recycled goods; and (3) mandates that hazardous material being shipped to the government are clearly marked.

-domestic source preferences and restrictions: mandates that government entities buy domestically produced supplies with certain exceptions and restriction certain exceptions and restriction certain procurements to domestic sources in order to protect the US domestic workforce.

-other: Federal Prison Industries, Indian Incentive Program.

QUESTION 3. What are the responsibilities of the government procurement line ministry?

Funding of a construction Project of this nature would be accomplished through the Federal budget and undertaken by one agency within the Executive Branch of the Federal government. As with all procurements, the responsibility of the agency conducting the procurement is to deliver on a timely basis the best value product or service to the customer which maintaining the public's trust and fulfilling public policy objectives.

TOPIC 2: Budget and Evaluation

QUESTION 1: What is the procedure of the government entity to apply for the national budget for the procurement?

The President and Congress both play major roles in developing the Federal budget. The law requires that, by the first Monday in February, the President submit to Congress his proposed Federal budget for the next fiscal year, which begins October 1. The White House Office of Management and Budget prepares the budget proposal, after receiving direction from the President and consulting with his senior advisors and officials from Cabinet departments and other agencies.

Congress passes a budget resolution - a framework within which the Members will make their decisions about spending and taxes. It consists of two types of spending - discretionary and mandatory. Discretionary includes 13 appropriations bills for federal agencies, mandatory includes spending on programs required by law.

Congress then reviews the President's budget, develops its own budget, and approves spending and revenue bills. Scores of committees and subcommittees hold hearings on proposals under their jurisdiction. For example, the House and Senate Armed Services Authorizing Committees, and the Defense and Military Construction Subcommittees of the Appropriations Committees hold hearings on the President's defense plan. The Budget Director, Cabinet officers, and other Administration officials work with Congress as it accepts some of the President's proposals, rejects others, and changes still others. Congressional rules require that these committees and subcommittees take actions that reflect the budget resolution.

Once Congress passes the budget it is then sent to the President for signature. The President can either (1) sign the budget in which he agrees to its content; or (2) veto the budget in which case it would be sent back to the Congress for another vote. In order to override the President's veto Congress must then have a 2/3s vote.

QUESTION 2: What is the procedure of ratification? How do we accurately evaluate the budget? Is it necessary to consult with the Scientific Fund?

See answer to question 1.

Once the Congress and the President have agreed to a budget, the Government monitors the budget through:

- agency program and budget officials;
- Office of Management and Budget;
- Congressional committees;
- General Accounting Office, as auditing arm of Congress,

TOPIC 3: Composition and responsibilities of the procuring entity.

QUESTION 1: How should the procuring entity be composed of and what are its responsibilities? Is it necessary to include all the parts that have provided funds for the project?

A well planned procurement identifies all participants in the procurement beginning with the customer and ending with the contractor of the product or service. Participants in the procurement process form *procurement team*. The procurement team consists of all participants in Government procurement including not only representatives of the technical, supply, and procurement communities but also the customers they serve, and the contractors who provide the products and services.

The goal of the procurement team is to deliver on a timely basis the best value product or service to the customer, while maintaining the public's trust and fulfilling public policy objectives. The role of each member of the team is to exercise personal initiative and sound business judgment in providing the best value product or service to meet the customer's needs. Best value must be viewed from a broad perspective and is achieved by balancing the many competing interests in the procurement system.

Specifically, Government members of the team are charged with making decisions within their arm of responsibility, including selection, negotiation, and administration of contracts. The contracting officer determines the application of rules, regulations, and policies, on a specific contract.

QUESTION 2: What are the criteria for qualifying procuring officials at different ministries?

At the present we do not have a uniform system for qualifying procurement personnel in the US. Rather the Department of Defense has one system and most civilian agencies have their own. The term "procurement personnel" is a broad term including contract specialist, contract administrator, contract cost/price analyst, contracting officer and procurement analyst.

Generally, procurement personnel are required, depending upon the level of responsibilities, to fulfill certain educational requirements, such as a college degree or have completed certain college classes in accounting, business finance, law, contracts etc. or taken an equivalency exam or completed graduate studies in business administration or procurement. In addition, contracting offers are issued "warrants" which set the dollar level for procurements over which they have responsibility.

TOPIC 4: Selection of procuring method

QUESTION 1: Since it is a mixed-funded project, each investor has its own requirements for the procurement. If the assumed procurement can not be divided into appropriate portions as that of the fund are composed of, how to deal with this problem? How does each investor supervise the whole process of procurement?

See answers to questions 1 and 2 under topic 2.

QUESTION 2: In the given situation there are goods, engineering and service procurements. How to select the most appropriate procurement method for each procurement / sub-procurement? What is the most acceptable threshold for goods, engineering and service respectively?

The rules governing procurements are found in the Federal Acquisition Regulation (FAR). These apply government wide and are supplemented by each procuring activity to fit their particular needs. To answer this question you need to understand the structure of the FAR.

A contracting officer preparing to conduct procurement will refer to the FAR for guidance. Many provisions in the FAR merely provide guidance and are not mandatory to avoid the contracting officer the opportunity to exercise discretion. However, many are mandatory either because they are based on law or are based on mandatory good business practice.

The FAR is not structured so that the contracting officer can turn to a certain part of the regulation and read all the rules governing a particular type of procurement. For example, there is no part of the regulation that provides all the rules governing the procurement of services.

Instead, the FAR is a document that must be read as a whole. Many of the rules that pertain to the Procurement of goods, also apply to services. For example, Part 5 contains general rules that pertain to the publication of intended procurement. They are written in such a way as to be applicable to the procurement for goods or services.

Notwithstanding, there are special rules that will apply depending upon the nature of the procurement. For example, for the procurement of services, we stress the concept of procurement based service contracting - telling the contractor what it is we want rather than how to do the job.

Thresholds play a part to the extent that the lower the value of the procurement the more simplified the procedures are used.

QUESTION 3: Based on the information given, how do you select the most proper method for procuring equipment, installation and mainframe?

See answer to question 2.

QUESTION 4: What is the best method for small procurements? Under what circumstances could the request for quotation be used?

The US procurement procedures for "small procurements" vary depending upon the dollar value of the procurement.

- Micro-purchases, under \$2500. The government wide commercial purchase card is the method to purchase and pay for these purchases. Micro-purchases do not require provisions of clauses.

- Purchases between \$2500 and \$100,000, the simplified acquisition threshold. Contracting officers are required to use simplified acquisition procedures for these purchases to the maximum extent possible. Purchases shall be made in a manner that is the most suitable, efficient, and economically based on the circumstances of each procurement. To facilitate the use of the most simplified procedures, many of the laws that generally apply to US procurements have been waived (e.g., Miller Act, Contract Work Hours and Safety Standard Act, Authority to Examine Books and Records of the Contractor, etc.). In addition -

- competition must only be used to the maximum extent practicable

- establish reasonable deadlines for the submission of offers
- offers may be solicited in writing or orally
- unsuccessful offerors do not need to be notified

Quotations: A quotation can be used in consonance with an oral solicitation or where a supplier has provided a catalog to the government. However, a quotation is not an offer and, consequently, cannot be accepted by the Government to form a binding contract. Issuance by the Government of an order in response to a supplier's quotation does not establish a contract. The order is an offer by the Government to the supplier to buy certain supplies or services upon specified terms and conditions. A contract is established when the supplier accepts the offer.

QUESTION 5: Is the two-stage tendering applicable to this cage? If yes, how to proceed it? If not, then in what situation could it be?

(A) Two stage - or two phase - design-build selection procedures may be used in construction contracting. It is usually based on a determination of the contracting officer that the following factors exist:

- three or more offers are anticipated
- design work must be performed by offerors before developing price or cost proposals, and offerors will incur a substantial amount of expense in preparing offers

(B) Procedures

One solicitation may be used for both phases, or two solicitations may be used in sequence. Proposals are evaluated in Phase one to determine which offerors will submit proposals in Phase two. One contract is awarded using competitive negotiation.

Phase One of the solicitation includes:

- scope of work
- technical approach
- technical qualifications such as, specialized experience, capability to perform and past performance of the offeror's team
- phase two evaluation factors
- the number of offerors that will be selected to submit phase two proposals

After evaluating phase-one proposals, the contracting officer selects the most highly qualified offerors and requests that those offerors submit phase two proposals.

Phase Two of the solicitation follows standard negotiation procedures and includes evaluation factors such as design concepts, management approach, key personnel and proposed technical solutions. Phase two requires offerors to submit both technical and price proposals and requires the contracting officer to evaluate both the proposals.

QUESTIONS 6: Under what circumstances could the negotiation tendering be used? Suppose the procuring entity realizes that some company is the most ideal supplier, is it possible for the procuring entity to invite the company to offer?

As a general rule sealed bidding is the method used in procurements for construction and the procedures are the same as those used for the procurements of supplies and services. However, as discussed above where there is considerable design work is required, two phase design-build selection procedures are used. These require the use of negotiation procedures.

Competition is one of the basic tenants upon which the US procurement system is built. Therefore, announcements of an intended procurement are published in the Commerce Business Daily and invitations to participate in a procurement are given in wide as possible circulation in the interest of promoting competition. While making a solicitation available to one supplier would be possible, we believe that a full and open competition provides the best chance of obtaining the best value products and services. Notwithstanding this, contracting officers generally send pre-solicitation notices to prospective bidders on a construction requirement when the proposed contract is expected to equal or exceed \$100,000.

QUES'NON 7: How to forecast and pre-warn the risks that might arise from the selected method?

Risk management rather than risk avoidance is attained by:

- Pricing of the contract. Generally a firm fixed price contract is used which provides the least risk to the government. An independent government estimate of the project is prepared and furnished to the contracting officer.

- Contractor past performance. Agencies are required to prepare contractor performance reports for construction contracts in excess of \$500,000.

- Specifications. Wherever possible contracting officers are required to use widely recognized standards or specifications promulgated by governments, industries or technical societies.

- Contracting officers make arrangements for prospective offerors to visit the work site and to have the opportunity to examine data available to the government which may provide information concerning the performance of the work, such as boring samples, original boring logs and records and plans of previous construction.

QUESTION 8: For developing economies, such as Sanratoria, government procurement could be a main stimulation for the government to achieve its economic and social objectives. In the preparing stage, how to select the procuring method to promote the development of domestic

industries through government procurement while the cost for preference margins could be at the minimum?

In the US there are two ways that we protect the domestic base: (1) domestic source preference; and (2) domestic source restriction.

Domestic Source Preferences:

- The Buy American Act was enacted in 1933 to ensure that federal agencies give a preference to "domestic end products" in competition for Government contracts. The Act provides that all materials, articles and supplies acquired by the Federal Government be only such products that have been manufactured in the US substantially all from articles, materials, or supplies that have been mined, manufactured in the US. The requirement applies unless (1) the cost of the domestic products is unreasonable, (2) the purchase of domestic products is inconsistent with the public policy interest, or (3) domestic products are not reasonably available in the quantity or quality required.

- Small Business Set-asides. SEE question 2 under Topic 1 above

Domestic Source Restrictions:

- Annual funding provisions within the US budget frequently impose on Federal agencies requirements that they purchase certain items domestically. These restrictions last generally for a year unless renewed in subsequent budgets. Some examples are: specialty metals, mooring chains, ball and roller bearings, cotton and other natural fiber products, hand or measuring tools.

PREPARATION FOR TENDER: MALAYSIA'S EXPERIENCE

FRAME WORK

1. INTRODUCTION
2. GOVERNMENT PROCUREMENT POLICIES
3. PROCUREMENT PRINCIPLES
4. PROCUREMENT ENTITIES
5. LAWS AND REGULATIONS RELATED TO GOVERNMENT
PROCUREMENT
6. CATEGORY OF PROCUREMENT
7. REGISTRATION OF COMPANIES
8. TYPES AND MODE OF PROCUREMENT
9. PROCUREMENT PROCESSES
10. SELECTION OF PROCURING METHOD
11. CONCLUSION

PREPARATION FOR TENDER: MALAYSIA'S EXPERIENCE

FRAME WORK

1. INTRODUCTION

- prime objective

2. GOVERNMENT PROCUREMENT POLICIES

- to stimulate growth of local industries;

- to provide support and encourage the evolvement of Bumiputera (indigenous) entrepreneurs in line with the objectives of the National Development Policy (NDP) to create Bumiputera Commercial and Industry Community;

- to enhance the capabilities of local institutions and industries via transfer of technology;

- To stimulate and promote service oriented local industries such as freight and insurance.

3. PROCUREMENT PRINCIPLES

- Public Accountability;

- Transparency;

- Value for Money;

- Open and Fair Competition.

4. PROCUREMENT ENTITIES

- The Federal Government;

- The State Governments;

- Local Authorities;
- Statutory Bodies;
- Government Companies.

5. LAWS AND REGULATIONS RELATED TO GOVERNMENT PROCUREMENT

- Financial Procedure Act 1957;
- Treasury Instructions;
- Treasury Circular Letters;
- Federal Central Contract Circulars

6. CATEGORY OF PROCUREMENT

- Works;
- Supplies;
- Services.

7. REGISTRATION OF COMPANIES

- Supplies and Services: To be registered with Government Procurement Management Division, Ministry of Finance;
- Works: To be registered with Contractors Service Centre, Ministry of Entrepreneur Development.

9. TYPES AND MODE OF PROCUREMENT

- Direct Purchase;
- Quotation;
- Tender.

10. PROCUREMENT PROCESSES

-Quotation;

-Tender:

- Preparation of specification;
- Preparation of Tender Documents;
- Advertisement;
- Closing and Opening of Tenders;
- Evaluation of Tenders;
- Selection of Successful Tenderer;

-Direct Negotiations:

- Urgent requirement;
- Uniformity and Additional;
- Sole Supplier;
- Local Bumiputera Manufacturer.

11. SELECTION OF PROCURING METHOD

- Mixed Funds Project;
- Goods, Services and Works Procurement;
- Small Procurement.

12. CONCLUSION

-The Malaysian Government is practicing an open procurement system.

PREPARATION FOR TENDER: MALAYSIA'S EXPERIENCE

1. INTRODUCTION

1.1 The prime objective of the Malaysian Government procurement is to support Government's programs by obtaining value for money through acquisition of works, supplies and services. To meet this objective, the Malaysian Government has formulated policies, principles, objectives and procedures.

2. GOVERNMENT PROCUREMENT POLICIES

2.1. The Malaysian Government Procurement policies are as follows: --

- a) To stimulate the growth of local industries through the maximum utilization of local materials and resources;
- b) To provide support and encourage the evolvement of Bumiputera (indigenous) entrepreneurs in line with the objectives and aspirations of the National Development Policy to create Bumiputera Commercial and Industry Community;
- c) To enhance the capabilities of local institutions and industries via transfer of technology;
- d) To stimulate and promote service oriented local industries such as freight and insurance.

2.2. in order to achieve targets set for the growth of local industries and to provide support of the indigenous entrepreneurs, the Government has set up threshold values of a maximum of 10% on the lowest evaluated and acceptable tender for procurement value not exceeding RM 10 million.

3. PROCUREMENT PRINCIPLES

3.1. Government procurement is essentially based on the following principles:-

a) **Public Accountability**

Procurement should reflect public accountability entrusted with the Government. The Government should be able to justify that the procurement is based on the best value for money.

b) **Transparency**

To facilitate better understanding among suppliers and contractors, all procurement regulations, procedures and processes need to be clear and transparent.

c) **Value for Money**

Government procurement should yield the best returns for any amount spent in terms of quality, quantity, timeliness, price and source.

d) **Open and Fair Competition**

Processes involving government procurement offer fair and equitable opportunities to those participating or competing in any procurement.

4. PROCUREMENT ENTITIES

4.1. The Malaysian Government administration and machinery consists of the following entities:-

a) **The Federal Government**

The Federal Government comprises of 24 ministries headed by the respective ministers and administrative heads, the Secretary-Generals. There are 100 Federal Departments which are components of the Federal Ministries.

b) **The State Governments**

There are 13 State Governments within Malaysia with 240 state departments implementing state functions along with Federal Departments.

c) **Local Authorities**

The Local Authorities constitute the City Councils, Municipalities and District Councils which operate with revenue derived from sources within their jurisdiction and boundaries namely assessment, licensing etc.

d) **Statutory Bodies**

Statutory bodies which are set up under Statute Acts both by Federal and State Governments are generally governed by government procurement procedures.

a) **Government Companies**

Government Companies operates as business ventures where the Government is a stake holder. They are business ventures and funds are allocated to them from the Consolidated Fund.

4.2. Ministry of Finance is the Central Agency responsible for:-

- a) control and management of public finances;
- b) set policies for procurement;
- c) responsible for the registration of contractors for supplies and services.
(For works, the Ministry of Entrepreneur Development is responsible for the registration).

5. LAWS AND REGULATIONS RELATED TO GOVERNMENT PROCUREMENT

5.1. Laws and regulations related to Government Procurement are as follows:-

a) **Financial Procedure Act 1957.**

Under this Act, the Ministry of Finance is given the power to control and manage public finances of Malaysia and outlines financial and accounting procedures. The Act enables the Ministry of Finance to formulate policies and procedures related to procurement.

b) **Treasury Instructions**

The Treasury Instructions (TI) has detailed financial and accounting procedures and encompasses the regulations that need to be adhered to in the management of Government funds. Under the TI, the Ministry of Finance has set **TI 166** to **TI 300** for procurement purposes.

All procurement entities must adhere to the instructions strictly to ensure the objectives of procurement are achieved.

c) **Treasury Circular Letters.**

Treasury Circular Letters are issued from time to time to improve, implement, inform, clarify and amend certain policies, rules, regulations and procedures whenever required by the Government.

d) **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. Usually they are in the form of period contracts with fixed price and estimated quantities to enable the users to make order from time to time during the contract period. The Central Contract Circulars normally contain details of the items, price, suppliers, area of supply, specifications and mode and time of delivery.

- 5.2. The documents are prepared and issued by the Ministry of Finance after consulting other implementing Ministries such as the Ministry of Public Works, Ministry of Entrepreneur Development and Ministry of trade and Industry.

6. CATEGORY OF PROCUREMENT

- 6.1. The types of procurement in Malaysian system are as follows:-

a) **Works**

Works contracts include construction and engineering activities involving infrastructure and building works and also inclusive of mechanical and electrical aspects of the work.

b) **Supplies**

Supplies include raw, intermediate and finished goods.

c) **Services**

Services includes engagement of manpower, expertise and consultants.

7. REGISTRATION OF COMPANIES

7.1. All companies who wish to participate in Government procurement (except for direct purchase valued at less than RM 10,000) must be registered with the Ministry of Finance for supplies and services and with the Contractors Services Center, Ministry of Entrepreneur Development for works. The purpose for registration is to ensure only genuine companies participate in Government Procurement. Reliability of companies is critical to ensure the success of the Procurement.

7.2. Companies can apply for registration at the relevant authority by using the standard forms. Upon receiving the application, the ministries concerned may inspect the premise of the company, verified information submitted and examine the documentary evidents for finance, management, personnel and working machinery.

7.3. Subsequently, the process of registration is conducted through a committee consists of officers from the Ministry of Finance, Ministry of Public Works, Prime Minister's Department (EPUIICU) and Public Enterprise Department. Once registration is approved, a certificate is issued to the company and a fee has to be paid. A registration is valid for two (2) years and the company has to apply for renewal or else the registration is considered lapsed.

7.4. The registration requirement enables the government to take relevant disciplinary action and to impose penalties on contractors who do not perform according to the contract. Penalties, imposed according to deviations, range from warning, suspension of registration for a period up to five (5) years and blacklisting of companies or Board of Directors involved.

8. TYPES AND MODE OF PROCUREMENT

8.1. There are three (3) major types of procurement implemented as follows:-

a) **Direct Purchase**

i) This procedure allows procurement of goods and services up to RM10,000 directly from any known suppliers through the issue of a Government Procurement Order. The requirement of registration is exempted.

ii) For procurement of goods and services above RM10,000 but not exceeding RM50,000 may be done directly through the issue of

Government Procurement Order from suppliers registered with the Ministry of Finance.

iii) Procurement of works up to the value of RM50,000 may be done through the issue of a works indent to a contractor registered with the Contractors Services Center, Ministry of Entrepreneur Development.

b) **Quotation**

Quotation is used to procure goods, services and works valued at above RM50,000 but not exceeding RM100,000. Purchasing Department is required to call quotations from at least five (5) registered companies.

c) **Tender**

Tender process is carried for procurement of goods, services and works above the value of RM100,000. All contractors intending to participate in tenders must be registered with the Government except for international tenders.

9. PROCUREMENT PROCESSES

9.1. Quotation

- a) Treasury Instruction No 170 refers to mechanism of quotation.
- b) Once a purchasing department identifies the category of procurement to be made, a specification or a brief description of the item is to be prepared.
- c) The next step to be taken is to identify at least five (5) registered companies eligible for the procurement and to invite them through the issuance of Form Q (together with the specification). The form has to be completed accordingly and sealed and submitted in at least seven (7) days at a designated place, date and time. To ensure and maintain fairness, a notice calling for other eligible companies is displayed at the department's notice board.
- d) At the time of closing, an opening committee of at least two (2) members is set to open and register all the proposals accordingly and

prepares two separate envelopes for the purpose of technical and financial evaluation by the technical and financial committees respectively.

e) Evaluations prepared by the committees are then forwarded to the Quotation Selection Committee.

f) Based on the proposals, the Quotation Selection Committee will select the lowest evaluated and acceptable quotation. Quotation Selection Committee is chaired by head of warrant holder plus two (2) grade one officers.

g) A Letter of Offer is subsequently issued to the successful company.

9.2. **Tender**

a) The process of tender is for procurement of goods, services and works above the value of RM 100,000 as stated in Treasury's instructions 171, 181 and Treasury Circular letter No. 2 of 1999. The following are the sequence of actions to be taken in a tender process:-

I) Preparation of Specification

-To prepare a tender specification, a committee of at least three (3) qualified members is formed and at least one from the user department. A qualified member means he is knowledgeable about the items to be procured.

-Specifications should be as detailed as possible to give a tenderer a very clear idea of what is required or expected. When figures are used, it should state the words 'range, minimum/maximum or approximately'. To achieve this, the committee has to discuss and finalise the criteria such as type of product, color, size, weight, quality, quantity, packaging and mode of transportation to the end-user.

-Specifications must comply to acceptable international standards.

-Tailored specifications to suit any brand are strictly forbidden. Objections can be made within 14 days for local tender and 28 days for international tender.

II) Preparation of Tender Documents

-Tender documents shall include general and specific terms of conditions, specifications, a copy of agreement, the technical and price schedule (to be evaluated by a technical and financial committee respectively), delivery period, place of delivery, scope of works, plans and drawings, formats for tenderers performance and track record and company's profile.

-Tender documents must also be prepared in line with the government Procurement policy.

-The minimum cost for a tender document is RM50.00.

Sale of tender documents may commence from the date of publication in the dailies. Only contractors fulfilling the local registration requirement may purchase tender documents for local tenders. For international tenderers, local registration requirement is exempted.

III) Advertisement

-All tenders are advertised in at least one (1) Bahasa Malaysia (Lingua Franca of Malaysia) daily. International tenders must be advertised in at least two (2) local dailies of which one (1) in Bahasa Malaysia and the other in English daily. Embassies and High Commissions would be informed of such opportunities.

-Tenderers are given a submission period of at least 21 days for local tender and 56 days for international tenders.

-The tender advertisement stipulates the precise date and time of closing and also specify place of tendering department for the tender proposal to be submitted.

IV) Closing and Opening of Tenders

-Based on Treasury Instruction No. 195, it is mandatory that the closing time is at 12.00 noon on the specified date. To avoid confusion, no tender is to be accepted after that time.

-Tender proposals submitted should include the technical and financial proposals prepared separately in two copies and sealed in different envelopes to facilitate scheduling.

-All proposals received are to be opened by a Tender Opening Committee comprising of senior government officers who will then schedule all the tenders and prepare a schedule of prices quoted. For international tenders, public opening is allowed.

-All tenders will be accorded a serial number and name of tenderers will be omitted to facilitate fair, just and independent evaluation of tenders by the Technical and Financial Evaluation Committees.

-A copy of tender schedule comprising of tenderers codes and price will be displayed at the notice board.

V) Evaluation of Tenders

-Evaluation is done by the Technical Evaluation and Financial Evaluation Committees. These committees will determine the criteria and weightage for evaluation in their respective areas based on the information required in the Tender Document.

-The evaluation of both these committees will be forwarded to the Secretariat for the purpose of final evaluation of all the tenders.

-The final evaluation will be conducted to consider price and non-price factors and preferential treatments that has been outlined for locally produced goods and for the Bumiputera tenderers,

- This tender evaluation report will then be submitted with proposals to the Government Procurement Board of the ministry or the department concerned.

VI) Selection of Successful Tenderer

-The selection of a successful tenderer is made by the Government Procurement Board of a ministry or department based on general procurement principles, pre-determined criteria and the Technical and Financial Evaluation Committee's reports. A representative from the Ministry of Finance is appointed as one of the members of the Procurement Board and his presence is compulsory to ensure 'check and balance' in making decisions.

-Considerations made by the procurement board are only on tenders valued not exceeding RM 15 million for supplies and services and RM30 million

for works. In cases where the tender value is above the stated amount or if there is a split decision among the committee members of the procurement board, the tenders would be forwarded with recommendations of the procurement board to the Ministry of Finance for final decision.

-Once a decision is made, the successful tenderer would be issued with a letter of award and the tenderer is required to reply within 14 days together with a bank guarantee if he accepts the award.

-Contract agreement will be signed after all documents are incorporated in it by the designated officer authorized for the purpose.

9.3. Direct Negotiations

- a) The Ministry of Finance is the authority to decide on the exceptional procurement process based on proposals from agencies. The acceptable criteria for this mode of procurement are as follows,-

-Urgent requirement.

-In a situation whereby a project or goods is urgently required and failure of which may cause negative effect to the general public. Examples of such project/goods the building of hospitals, the purchase of hospital equipment and items of security needs.

-Uniformity and Additional
Department may propose to have additional item to the ones in hand.

-Sole Supplier
It is known that there is only one manufacturer for the product or OEM for spare parts.

-Local Bumiputera Manufacturer
In line with the social-economic policy in developing Bumiputera manufacturers.

- b) Department will submit proposals for negotiated tender to the Ministry of Finance. The desk officer may then study the proposal and prepare a working paper. The paper will be presented to a committee of three (3) senior officers chaired by the Secretary General of Treasury. This committee will

then advise the Minister of Finance accordingly. Decisions made by the Minister will be conveyed to the department.

- c) Negotiated tender is ideal for privatization projects. Usually such projects are complex involving big investments, needs long term contract periods (+ 10 years) and are required for the economy's continuous development. The interested company may put up a complete proposal to the Privatization Unit of the Prime Minister's Department. If the project is found to be viable, then the company will be called to present briefings to the Privatization Committee. Subsequently, a working paper will be submitted to the Government for decision.

10. SELECTION OF PROCURING METHOD

10.1. Mixed Funds Project

a) As mentioned earlier, there are three (3) categories of procurement (i.e. supplies, services and works). Usually, we have all these three (3) elements is a project. It is simple if the cost of each component is clearly identified. Therefore, we can procure them separately or independently. In a situation where procurement of goods, services and works come in a package, the component with the most portion will determine the category of procurement.

b) Goods, Services and Works Procurement
Although our tender process is very much similar to that required by international organizations, yet, there are differences. For a mixed finance project, the Organization with the most portion financed may determine the procurement process and lead the project through reasonable mechanism.

c) Small Procurement
For urgent need and for easily available items/services/projects, small procurement is more effective. Small procurement is done through direct purchase and quotation. Procurement up to RM 50,000 can be done through direct purchase. If the value is above RM 50,000 but not exceeding RM 100,000, procurement through quotation exercise is necessary by inviting at least five (5) contractors.

11.CONCLUSION

11. 1. The Malaysian government is practicing an open procurement system where local and international tenderers are given opportunities to participate. Procurement policies are formulated based on principles of public accountability, transparency, value for money and open and fair competition. Our procurement system is very much in line with the international requirements. We get a lot of assistance from international organizations such as the World Bank, Asian Development Bank as well as Crown Agent in providing training to officers right from 1970. We will continue improving the procurement system in order to meet the requirements of the ISO.

INTRODUCTION

The implementation of programmes and projects are often spread over a considerable period of time and involve a number and variety of procurement activities.

For 8 years I was involved in the Strengthening and Refurbishment of two heritage buildings – Parliament House and the Parliamentary Library Building. They were key buildings in the Parliamentary Complex. Being historic buildings of national importance their refurbishment required a higher standard workmanship. The procurement process had to be tailored to achieve than requirement. Other unusual features included the supply and installation of seismic base isolators.

While the procurement processes were repeated over and over again, the principles that apply are common. They are adapted to the particular circumstances and applied in many different ways.

The strengthening and refurbishment of Parliament Buildings was a large project involving the engagement 20 consulting firms, 3 major construction contracts of \$122m, \$9m and \$850,000 NZD, and the letting of xx contracts for the purchase and installation of furniture, fittings and equipment. For your information I will circulate a history of the project. These are specialist buildings with unusual requirements not unlike the case study of the National Laboratory which we will discuss later.

TOPIC 1: PREQUALIFICATION

Used by programme sponsors to investigate the capability of the industry or prospective tenderers - (general purpose)

- Registration of Interest
- Scoping and sizing of tender packages
- Establishment of a register

Comment: A register is a good way to process any unsolicited enquires and avoid the meetings.

Used by project project managers - (specific purpose)

- when a specialist skill or expertise is required
- to ensure high quality of workmanship
- to ensure satisfactory performance (capability and delivery)
- to limit the numbers tendering - production of documents or
- restrict numbers on projects

Comment: The basis for Selecting Tenderers for major projects, problem trades and specialised products.

The Prequalification process

1. Publically advertise for Interest setting out in general terms the scope of the intended tender(s) and where to direct inquiry.
2. Provide a questionnaire to all who respond and set a time for the return of completed questionnaires.
3. Analyse and process the responses
4. Establish a Register or notify the registrants of any selection.

Issues - maintaining confidentiality (Privacy Act)

- keeping information up to date (Integrity of the Register)

Examples - (5 Overheads)

- The Proforma for the Parliamentary Service Register of Consultants
- The advertisement and questionnaire for select of the main contractor for Strengthening and Refurbishment of Parliament Buildings.
- The advertisement and assessment sheet for furniture and equipment for the completed Parliament Buildings.

Who should get the prequalification documents?

ALL as this the first step in the tender process

SOME having received them, will not submit because they have a clearer picture about the contract and may realise that they are unlikely to meet the criteria or any special conditions required.

The cost of advertising will limit the amount of information that be provided so often the registration form or questionnaire will include additional information about the contract(s) and the process of tendering. You can include as much as you wish at this stage. The more that is included the less the drop out rate at a later date.

You can see from the examples that the prequalification documents (or questionnaire) require the following information:

- Identification and contact information - address, telephone, fax etc
- Factual data - banker etc
- Questions relating to past experience and performance - used for assessment of criteria.
- Specific requirements for the contract being tendered
- When and how the completed submission is to be delivered

Some Criteria for Prequalification for Building Consultants and Contractors

For Contractors and Consultants

- Technical resources and capacity
- Financial Capacity
 - Bond (Contractors)
 - Professional Indemnity Insurance (Consultants)
- Quality Assurance Plan
- Time Performance
- Relationships with others - Partnering approach v confrontational

For Contractors

- Health and Safety Record
- Human Resource Management
- Skill formation
- Project Organisation

For Consultants

- Creative and innovative ability
- Life cycle costing

The setting of criteria is part of the initial planning for the procurement and is carried out by the project initiator and advisors. They know what they are looking for.

The assessment would be carried out applying weightings that are appropriate to the purpose of the tenders. However it is difficult to avoid some subjective evaluations.

Their decisions could be made subject to review by an experienced independent panel.

In the Parliamentary Service we formed a Tenders Review Board - “wise old heads asking hard questions”. Members of the Tenders Review Board are the General Manager, Parliamentary Service as major stake holder, and two experienced external professionals.

The purpose of the Board is to:

- supervise the tender process to ensure fair treatment,
- provide technical understanding of any issues and experience to ensure that all relevant questions are asked and considered by Consultants or the Parliamentary Service and;
- provide assurance to the building industry, the Speaker, and the Parliamentary Service Commission that tenders had been handled properly.

Example - a challenge to the non-selection of a main contractor – Ombudsman’s ruling

Timetable for Prequalification

Prequalification should be carried out well in advance of calling tenders. Tendering for large projects can be very disruptive to a firm’s operations. Therefore as much time as possible is desirable to allow for preparation and to obtain information from sub contractors/ suppliers. It may be convenient to include a proposed timetable in the prequalification document. This would enable firms to feedback views as to whether the times allowed are too short or too long. Unreasonably short times for tender do not produce the best prices.

Normally a week is sufficient to respond to an advertisement. You might choose to advertise twice (normal if there is plenty of time). To this is to be added sufficient time to complete and return the questionnaire (normally not longer than two weeks) While it is good practice to have

closing date, its enforcement need not be as strict as it would normally be for tenders. (if questions are asked about timely delivery most firms will endeavour to create a favourable impression by meeting your closing dates).

TOPIC 2: THE CALLING OF TENDERS (SOLICITATION)

Tenders are invited by:

- Notices in newspapers - (public)
- Advertisements in tendering magazines
- Through agencies such as Crown Agents, NZ Industrial Supply Office or Government Supply Brokerage
- Letters of invitation - (private)

The invitation to tender should provide the following information:

- The purpose for calling tenders
- What goods and/or services are to be provided by the contractor
- List of documents
- The terms of contract to be used
- What unusual circumstances could affect the contract
- What delivery time is expected
- How the services and/or goods are to be delivered
- What access for inspection of the site
- Procedures for asking questions - ambiguity of documents, clarifications
- Any special conditions of tender - validity period
- Form of submission of tenders
- Delivery of tenders and closing time/date

While letters of invitation can cope with all this information, newspaper advertisements have to be more selective. Consequently the information has to be provided by other means.

After prequalification at the commencement of the tender process, the selected tenderers will be advised (normally in writing) when and where to uplift the tender documents. The documents usually contain the conditions of tender. They can be part of or separate from the conditions of contract.

On the Strengthening and Refurbishment of Parliament Buildings, a pre-tender meeting was held to which representatives of all tenderers were invited. It was held in the building that was part of the tender. A presentation was made on the contents of the Tender documents and the objectives of the project.

Language of Invitation and Documents

Any invitation should be in the same language as the contract documents. Good communication (Clear drawings and/or well written specifications and conditions of contract) is a key factor in a successful contract.

Those calling the tenders are setting the rules. They will only have good tenders if they have pitched the rules appropriately.

All contracts let by the Parliamentary Service are written in English and require compliance with NZ law and prices in NZ dollars.

Budget or Bottom Price

Prior to calling tenders the procuring entity should have established some idea of the likely cost outcome.

For construction work there will be Firm Estimates of Cost. These are derived from a non-competitive pricing by one of the consultants (usually the Quantity Surveyor) of the tender documents. It will be used to compare the prices received from the tender.

Approval accept tenders may have been given on the basis that an acceptable tender is received within say 10% of that estimate.

Bottom Price discussed in respect of:

- Consultancy services – price not as important as the services
- Furniture & equipment – difficulty in determining & more variable outcome

Ultimately it is the procuring entity that will decide whether it can afford to accept the offer. It is important that the conditions of tender legally allow all tenders to be rejected for any reason. The following words “The lowest or any tender will not necessarily be accepted” should be included in the letter of invitation or the conditions.

Modification

The names and addresses of those uplifting tender documents should be registered so that if there are changes or clarifications to be made to the tender documents then it is possible to notify all tenderers in writing. Such modifications should be notified in sufficient time for the tenderers to include them in their tender.

Building tenders have a very formalised procedure for dealing with a tenderer’s enquiry, the subsequent issuing of ‘notice to tenderers’ and require the tenderers to acknowledge their receipt with their bid.

Some conditions (particularly conditions for design competitions) permit questions to be asked. They must be submitted by a certain time. The questions and answers are then sent to all tenderers/ competitors.

The impact of modification can cause the tender period to be extended. Any extension is itself a modification. If the modification is large it could cause the tenders to be abandoned altogether.

Ideally modifications should be avoided because they send the wrong signals to those bidding. Any uncertainty can cause the tendered prices to be increased to cover that uncertainty.

TOPICS 3&4: TENDER PROCEDURES

The requirements for the delivery of the tenders should be set out in the conditions of tender.

- Time, Date and Place - (4pm midweek is preferred)
- Whether it is to be placed in a Tenders Box or delivered to a person.
- How it is to be identified - (in a sealed envelope marked 'Tender for ..')
- The form of submission specified
- Method of payment of any tender deposit(Bid Bond) required - (cheque)

Issues: - *Telephone Tenders*
 - *Faxed tenders*

Tender deposits (**Bid Bonds**) are generally required with all tenders. Sometimes they are required when the tender documents are uplifted but almost always when tenders are submitted. Their purpose is to guard against irresponsible uplifting of documents and to cover the cost to the entity of any withdrawal before the award of the contract. It encourages 'bona fide' tendering and is considered good practice.

The deposits are placed in a trust (or separate) account and are returned to the unsuccessful tenderers when a contract is awarded. It is not to be confused with a Performance Bond which is normally required from the successful tenderer within a specified period of acceptance of the Contract.

The Opening of Tenders

- The scheduling of receipt of tenders – witnessed & tags noted
- The shortcomings of public openings – not necessarily the true picture
- Modification & Withdrawl by tenderer (Q2/T3 ,Q3/T4)
- Tendering with only 2 – how do they rank? (Q3/T3 – Topic1)
- Negotiated Tender – Prequalification offers justification (Q3/T3 – Topic1)
- Collusion – cheating! (Q4/T3 -Discussion)
- Handling of non complying Bids (Q5/T3 – Discussion)
- Suspension of Tendering Q6/T3

Discussion: Application of Topics 1-4 to the National Laboratory

Qualification(tags) considered as part of evaluation(Topic 5)

New Methods and Future Development

**by Nigel Shipman,
Director of Government Supplies,
Hong Kong, China**

Topics covered in the presentation

- Features of the Hong Kong Government Supplies Department's procurement system
- The development of an electronic tendering system for GSD
- How electronic tendering might change procurement for the National Laboratory construction project
 - APEC's procurement principles maintained
 - benefits obtained
- Future development of tendering
 - advantages and disadvantages of tendering as a method of procurement
 - modifications to traditional tendering practices
 - how the Internet will change government procurement

Main functions of GSD

- (i) to purchase many common-user items (e.g. stationery, cleaning materials, electrical appliances, textiles for making into uniforms), hold these items in a central store and deliver them to end-users when required, using its own fleet of vehicles;

Main functions of GSD

(ii) to act as the purchasing agent for government departments and NGOs acquiring products above a minimum value which are peculiar to their own needs and functions; such items are usually delivered by the supplier directly to the location of use;

Main functions of GSD

- (iii) to serve as the Government's source of expertise on purchasing and stores management; this function is discharged primarily through the secondment of Supplies Grade staff to other departments to manage departmental stores and assist in their own purchases.

Key Procurement Statistics 1998-99

- Total value of purchases : HK\$5,010 million
(US\$650 million)
- Registered suppliers : **4,763**
- Tender invitations issued : **49,118**
- Contracts awarded : **4,613**

Key Procurement Statistics 1998-99

■ Major categories of purchases

↗ pharmaceuticals :

HK\$1,560 million (US\$200 million) 31%

↗ computer equipment and software :

HK\$995 million (US\$130 million) 20%

↗ water treatment chemicals :

HK\$358 million (US\$46 million) 7%

↗ hospital and medical equipment :

HK\$304 million (US\$39 million) 6%

↗ scientific and laboratory equipment and consumables:

HK\$250 million (US\$32 million) 5%

Key Procurement Statistics 1998-99

■ Major categories of purchases

↗ fuel oils and hydrocarbon lubricants :

HK\$182 million (US\$24 million) 4%

↗ medical consumables :

HK\$169 million (US\$22 million) 3.5%

↗ telecommunications equipment :

HK\$128 million (US\$17 million)
2.5%

↗ other categories :

HK\$1,064 million (US\$137 million)
21%

Key Procurement Statistics 1998-99

- Products purchased were manufactured in 36 countries or administrative regions
- Major sources of supply

	<u>HK\$(M)</u>	<u>%</u>
USA	1,613	32
China	717	14
<i>(excluding Hong Kong, Macau and Taiwan)</i>		
UK	395	7.9
Switzerland	382	7.6
Germany	344	6.9
Australia	264	5.3
Japan	205	4.1
Hong Kong, China	167	3.3
Other countries	923	18.4

Key features of GSD's purchasing system

- Adherence to WTO Agreement on Government Procurement requirements
- Forms of tendering
 - Open public tenders
 - Tenders following prequalification
 - Restricted and single tenders

Key features of GSD's purchasing system

- Approval by tender board
 - Central Tender Board for contracts for goods and services above HK\$10 million and works contracts above HK\$30 million
 - Supplies Tender Board for contracts for goods and services above HK\$1.3 million up to HK\$10 million
 - Works Tender Board for works contracts above HK\$3 million up to HK\$30 million
- Low value procurements
 - decentralised
 - quotations
 - repeat buy
 - Government purchasing card

Tendering by manual procedures

1. Prepare tender documents and specifications
2. Issue invitation to tender
 - ↗ tender notice published in Government Gazette and 4 Hong Kong newspapers
 - ↗ copies sent to overseas trade consuls in Hong Kong
3. Issue of tender documents
 - ↗ to registered suppliers for category of product to be purchased
 - ↗ to other potential suppliers on request
4. Tender offers deposited in tender box by stipulated tender closing time

Tendering by manual procedures

5. Tender evaluation

6. Submission to tender board

7. Award of contract

- letter of acceptance to successful tenderer
- name of successful contractor and contract price published in Government Gazette
- letter to unsuccessful tenderers informing them of reason for rejection of offer

Manual procedures supplemented by Internet

- 1995 : GSD launched Home Page on Internet
- Home Page now contains information in English and Chinese on
 - Purchasing procedures
 - Market research enquiries
 - Forecast of future procurements
 - Notice of current tenders and prequalifications
 - Standard tender terms and conditions of contract
 - Notice of contract award
 - Code of access to information
 - Links to other sites of interest,
e.g. APEC, International Public Procurement Association

Hong Kong SAR Government's policy for Information Technology

■ Digital 21 strategy

➤ to enhance and promote Hong Kong's information infrastructure and services so as to make Hong Kong a leading digital city in the globally connected world of the 21st century

■ Electronic delivery of public services

➤ to establish an information infrastructure with an open, common interface, through which the public can transact business with the government electronically, 24 hours a day, 7 days a week

Hong Kong SAR Government's policy for Information Technology

■ Public Key Infrastructure

➤ to enable secure electronic transactions by providing a framework for ensuring the integrity of information exchanged and for authenticating the identity of participants in such transactions

➤ Hongkong Post will become a “root Certification Authority” for Hong Kong

- ✧ issue digital certificates

- ✧ define other Certification Authorities

Hong Kong SAR Government's policy for Information Technology

■ Legal framework

➤ to establish a clear legal framework for the conduct of electronic transactions

⊗ legal backing for use of data messages and digital signatures in electronic transactions

⊗ establishment of Certification Authorities

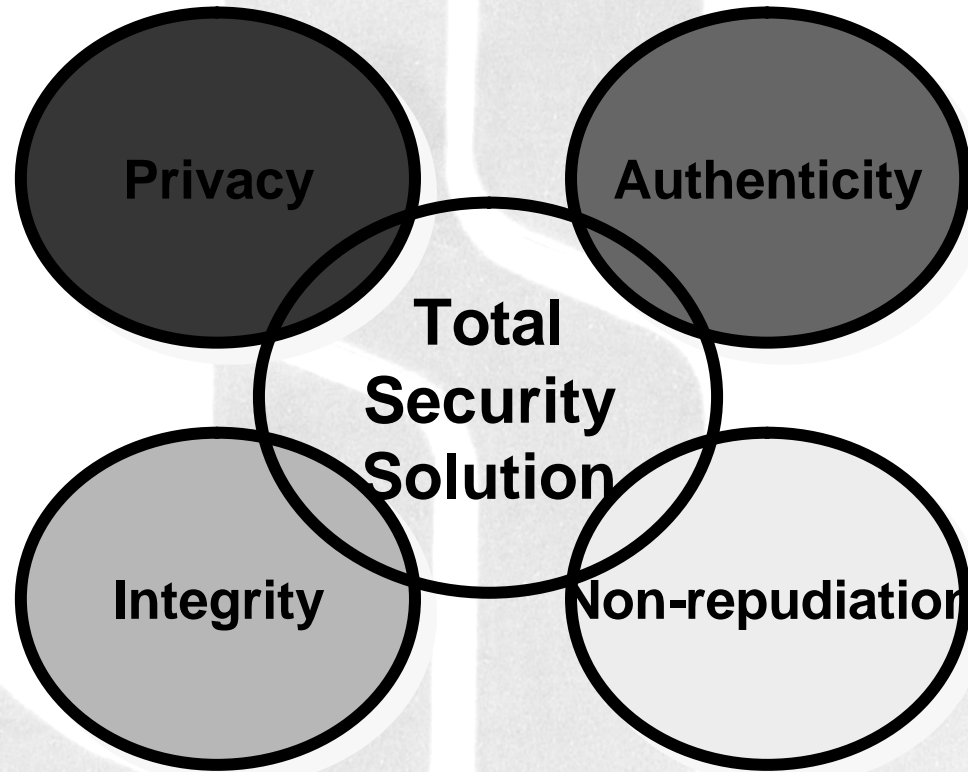
Development of an electronic tendering system for GSD

- May-October 1998* : Feasibility Study
- January 1998* : Request for information sent to registered suppliers and others who had expressed interest and put on Internet
- April-May 1998* : Presentations and demonstrations by potential vendors
- September 1998* : Funding approval
- December 1998* : Issue of tender invitation
- March 1999* : Award of contract for system development and operation
- December 1999* : Development of system completed
- January 2000* : Electronic tendering system operational

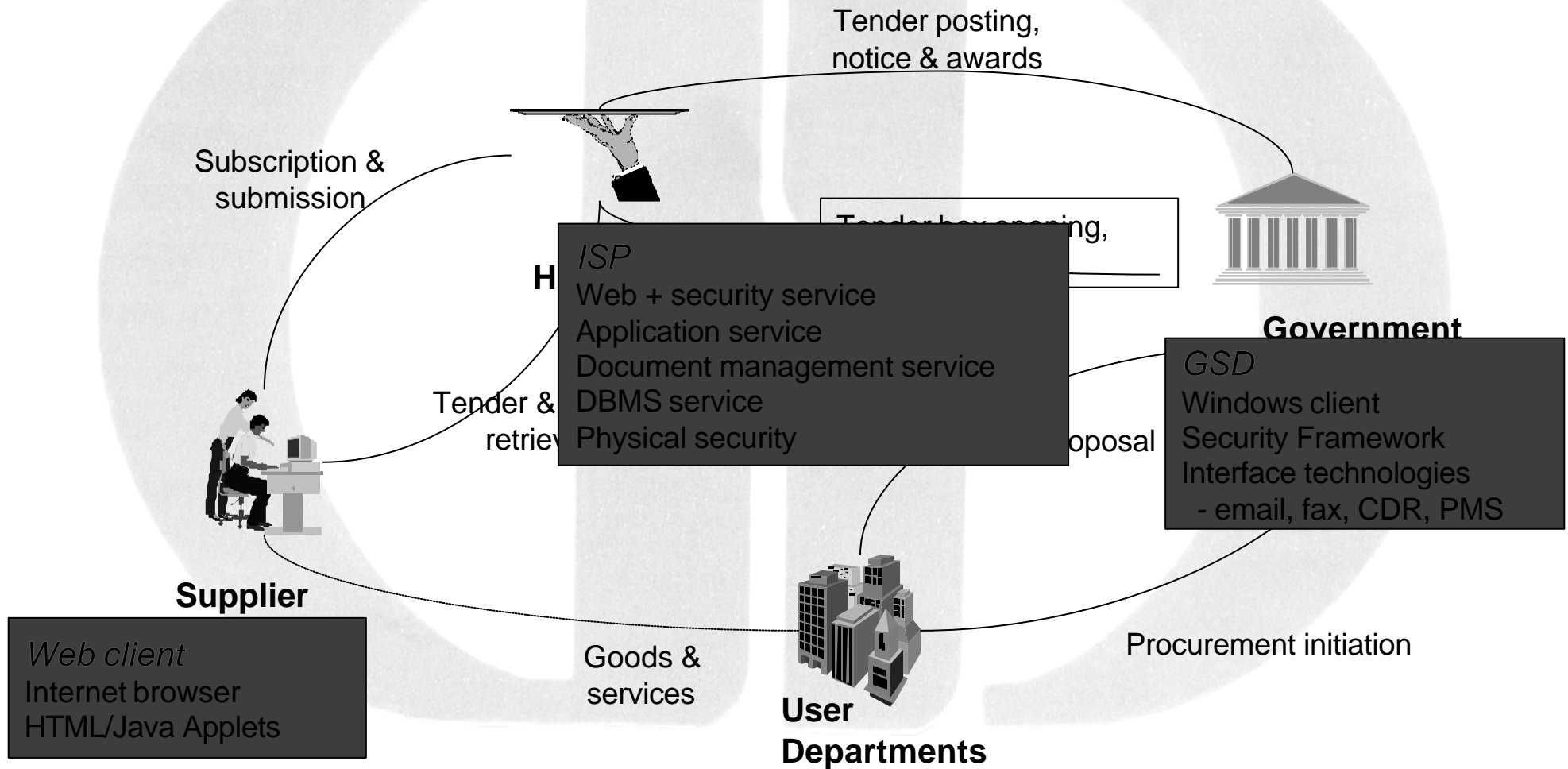
Features of GSD's electronic tendering system

- To be operated by contractor on subscription basis
 - ↗ subscription charge set at HK\$800 (US\$103) for a full year's benefits
 - ↗ infrequent users can pay a charge of HK\$20 (US\$2.60) each time
- Services to be provided by electronic means to subscribers
 - ↗ registration of suppliers
 - ↗ notification of tenders
 - ↗ issue of tender documents
 - ↗ receiving and responding to enquiries
 - ↗ submission of tender offers
- Suppliers will have a choice between existing manual system and electronic tendering system

Security Considerations



Solutions Overview



Electronic Tendering System Business Process





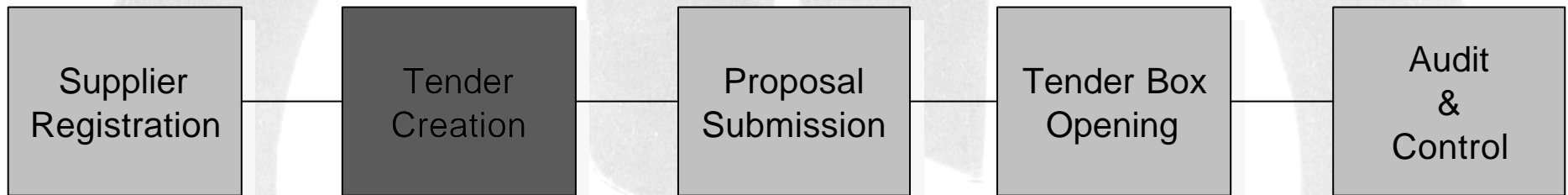
Business Process Supplier Registration



- Suppliers interact with the ETS via common web browsers without pre-installing additional software. All supplier data sent to ETS is encrypted via RSA encryption standard
- ETS Web client supports on-line searching, general or specific tender queries, document download, registration and submissions.



Business Process Tender Creation



- **Tenders are created with interface data from PMS. Tender documents and notifications are posted to the web automatically via the web publishing agent.**
- **The Electronic Tender Box provides a secured repository for tender proposals**



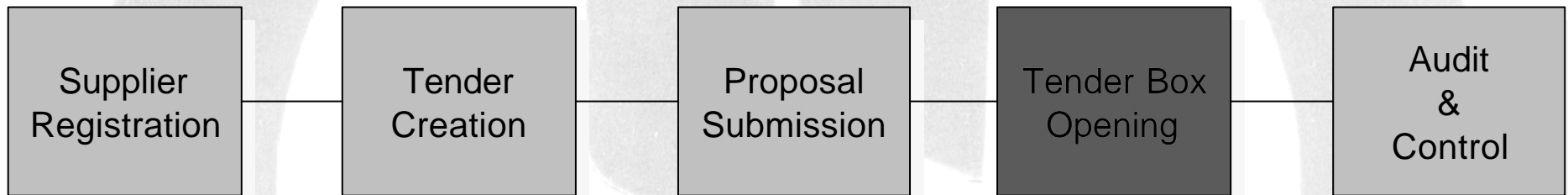
Business Process Proposal Submission



- **Tender submissions are managed by a security framework ensuring *privacy, integrity* and *authenticity*. Tender proposals are managed by a dedicated document server providing additional flexibility and ease of maintenance.**



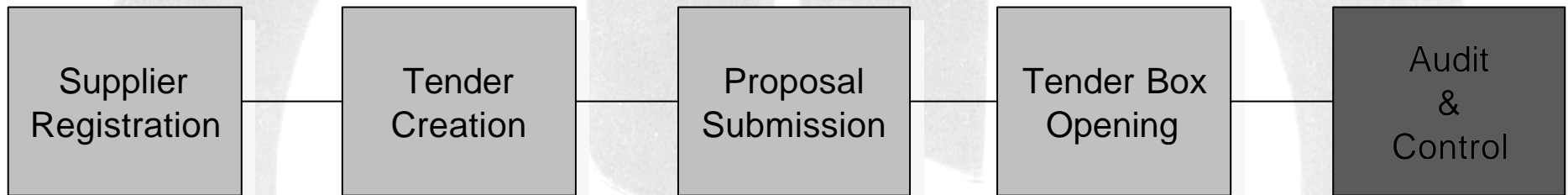
Business Process Tender Box Opening



- **Tender box opening procedure is designed to co-exist with current manual process at GSD.**
- **Comprehensive security and integrity control are installed**



Business Process Auditing and Security Control



- **Our design provides all level of logging with related to tender download and submission. Comprehensive audit trails are available together with performance and analysis statistics for further expansion.**

How would procurement for the National Laboratory construction project proceed if tendering through electronic means is introduced?

- Electronic tendering means more efficient mode of delivery, does not change tendering principles

How would procurement for the National Laboratory construction project proceed if tendering through electronic means is introduced?

- APEC's non-binding principles on government procurement continue to apply
 - Transparency principle : sufficient and relevant information should be made available to all interested parties consistently and in a timely manner through a readily accessible, widely available medium at no or reasonable cost
 - ⊗ tender information, including regulations and procedures, readily accessible and instantaneous
 - ⊗ on-line enquiry function to assist those not familiar with the organization's tender requirements and procedures
 - ⊗ reach of tender invitation extended to potential suppliers throughout the globe
 - ⊗ cost of electronic tender submission should be kept below cost of courier service
 - ⊗ prompt notification of contract award and reasons for

How would procurement for the National Laboratory construction project proceed if tendering through electronic means is introduced?

- APEC's non-binding principles on government procurement continue to apply
 - Value for money principle : GP practices and procedures should be directed to achieving the best available value for money ... on a whole of life basis

How would procurement for the National Laboratory construction project proceed if tendering through electronic means is introduced?

- APEC's non-binding principles on government procurement continue to apply
 - Open and effective competition principle : GP regime should be open and facilitate levels of competition commensurate with the benefits received ... readily accessible to all potential suppliers
 - ⊗ extending the reach of tender invitation to potential suppliers throughout the globe may improve the prospect of obtaining more competitive offers
 - ⊗ instantaneous transmission allows tenderer more time to prepare his proposal
 - ⊗ an efficient and cost effective system may reduce the administrative costs of tendering both for the purchasing organization and its suppliers

How would procurement for the National Laboratory construction project proceed if tendering through electronic means is introduced?

- APEC's non-binding principles on government procurement continue to apply
 - Fair dealing principle : procurement activities are conducted in a fair, reasonable and equitable manner and with integrity
 - ⊛ electronic tendering systems facilitate even-handed treatment of suppliers by easy transmission of information to all
 - ⊛ geographically-distant suppliers are not disadvantaged in comparison with local suppliers
 - ⊛ high level of security maintains confidentiality and prevents unauthorized access and amendment of bids
 - ⊛ tender box opening maintained under secure

How would procurement for the National Laboratory construction project proceed if tendering through electronic means is introduced?

- APEC's non-binding principles on government procurement continue to apply

➤ Accountability and due process principle :
accountable to their governments, the end-users, the public and suppliers for the efficient, cost-effective and fair conduct of their procurement

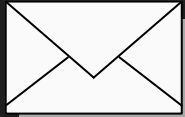
- ⊗ audit trail maintained throughout procurement process

- ⊗ integrity of system audited by independent authority (Hong Kong Productivity Council)

- ⊗ facilitates bid-challenge or other review mechanism

The business advantages of electronic tendering

Sending a 42-page document from Ottawa to HK



Courier

3 days

\$39.00



Fax

31 minutes

\$24.49



Internet

2 minutes

\$0.11

2160 times faster

Over 350 times cheaper

Source: Industry Canada Compilations

Benefits which the National Laboratory Construction project might obtain through electronic tendering

- Access to wider range of potential suppliers
- More competitive offers
- More time for tenderers to prepare proposals will help to ensure that proposals satisfactorily meet the needs of buyers
 - round-the-clock downloading of tender documents
 - instantaneous submission of bids
- Easier enquiry and response function may reduce risk of misunderstanding of requirements
- Shortening of procurement process
- Lower administrative costs for purchasing organization and for tenderers

What is the future development of tendering methods?

■ Advantages of tendering as a method of procurement

➤ **Fair**

- ⊗ based on rules and specifications determined in advance of the procurement process
- ⊗ if properly conducted, tendering can avoid favoritism or bias in the procurement process

➤ **Transparent**

- ⊗ same information available to all potential tenderers
- ⊗ reasons for acceptance or rejection of offers can be explained by reference to procurement rules or tender specifications

What is the future development of tendering methods?

- Advantages of tendering as a method of procurement
 - **Accountable**
 - ⊗ compliance with procurement rules can be monitored by legislature
 - ⊗ bid challenge system or other redress mechanism can be provided

What is the future development of tendering methods?

■ Disadvantages of tendering

- public perception that government organizations acquire cheap, low quality products and services
- end-users may not acquire the product that is best suited to their needs
 - ⊗ product specifications must be prepared with great care to provide a complete statement of desired product features
 - ⊗ relies on end-users' not suppliers' expertise to identify required product features
 - ⊗ end-users' may not be aware of current technological advancements
- may not produce competitive response
 - ⊗ vulnerable to cartels or market dominant supplier

What is the future development of tendering methods?

■ Disadvantages of tendering

➤ procurement process expensive and slow

⊗ over-elaborate procedures prolong the time of acquisition

⊗ lengthy documentation increases the administrative cost of procurement

➤ ~~may be unsuitable for low-value purchases~~
➤ absence of supply chain management

⊗ focus on competition not collaboration

⊗ absence of an incentive scheme to reward good-performing suppliers may mean that government is not regarded as a “preferred customer”

⊗ uncertainty over future business may lead supplier to try to recover total costs, including set up costs, during the initial contract term

Modifications to traditional tendering practices

- Electronic tendering
 - quicker, more convenient, cheaper and more user-friendly
- Longer term contracts
 - supplier has incentive to invest in the business relationship
- Prequalification (two-stage tendering)
 - ensures tendering confined to capable suppliers
- Marking schemes
 - products and services rated for quality aspects as well as price in tender evaluation
 - distinction made between mandatory and desirable product features
 - tenderers may be given extra marks for submitting alternative proposals which bring added value to improve the offer

Modifications to traditional tendering practices

■ Framework agreements

- Supply contracts made through tendering process with more than one supplier but without commitment on the quantity to be purchased over the contract term
- End-users may draw from any of these contracts on terms which are no less favourable than those in the contract
- Advantages
 - ⊗ multisourcing ensures competition between contracted suppliers maintained throughout the contract term
 - ⊗ end-users obtain a choice over the product they acquire
 - ⊗ suitable for mass-produced, high-technology products, e.g. PCs, mobile phones, where tendered models and prices may rapidly become outdated

How will the Internet change government procurement?

- More consumer and business purchasing is being conducted via the Internet
 - Forecast of growth of inter-company trade of goods over the Internet in America

<u>1998</u>	<u>2003</u>
US\$43 billion	US\$1.3 trillion

(Source, Forrester Research, quoted in the Economist)

- Internet trading will become the norm not the exception among businesses

How will the Internet change government procurement?

■ Electronic product catalogues

- ↗ range of available products and prices displayed in purchasing organization's product catalogue
- ↗ suppliers maintain the content of their page of product catalogue, provide updates to product features and prices
- ↗ end-users select from catalogue the product brand that is available on the most favourable terms

■ Informediaries

- ↗ provide electronic product catalogue for particular product categories, together with search engines and all the information on which to base a purchasing decision

How will the Internet change government procurement?

- Enables more comprehensive packaging of related products and services
 - e.g. merging of IT, telecommunication and broadcasting products and services
 - e.g. plane ticket + hotel reservation + hire car
 - flexibility to offer comprehensive solution to unexpected changes
- Increases power of the purchaser vis à vis the supplier
 - more comprehensive product search and analysis to find best available offer
 - your alternative supplier is just a mouse-click away

How will the Internet change government procurement?

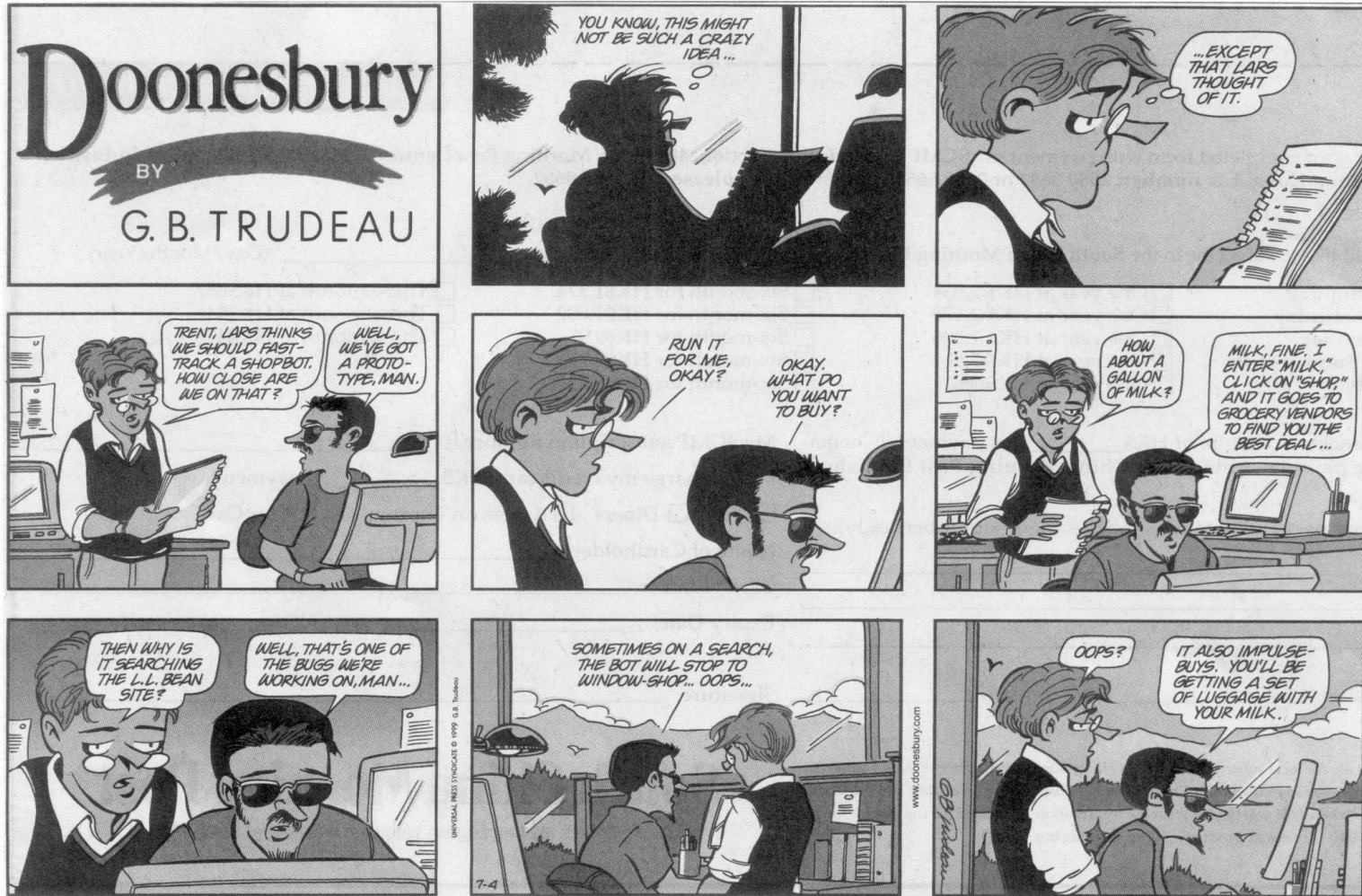
- Government procurement may become truly international
 - suppliers may seek access to a wider range of government markets
- Will electronic procurement harm SMEs?
 - “Its no longer about the big beating the small, its about the fast beating the slow.”
(Larry Carter, Chief Financial Officer, Cisco Systems)

How will the Internet change government procurement?

■ Possibilities for government purchasers

- Governments may eventually need to follow the trend to Internet trading
- Use of electronic product catalogues and intermediaries may replace part of traditional tendering
- Procurement rules may need to be modified to take account of the changing environment
- Purchasers should retain flexibility to adapt to rapid changes in product features, prices and package deals

Purchasing technology can sometimes go wrong





END

**APEC WORKSHOP ON GOVERNMENT PROCUREMENT PRACTICES
KUNMING, YUNNAN, CHINA, 14-18 JULY 1999**

STAGE 3

FULFILLMENT OF CONTRACT AND PROJECT EVALUATION

**By : Koh Kok Kiang,
Ministry of Finance
Singapore**

Introduction

I would like to thank the APEC GPEG Chair, the APEC Secretariat and the organisers for the invaluable opportunity to participate in this workshop. The format of the workshop, based on a simulation case with specific questions directed at a wide range of topical issues in procurement, makes for an interesting and focused discussion on procurement practices. There is, I think, much commonality amongst the economies on the basic principles of government procurement, as is well encapsulated in the set of GPEG non-binding principles, such as transparency, value for money, effective competition and fair dealing. But, given the same procurement scenario, it is likely that two different economies would not be conducting their procurement in exactly the same way although they may adopt the same principles. Each has developed its own practices, driven by its different social and economic considerations and as well as different legal systems. It is with this backdrop of different practices in mind that I find meaning in sharing my views on this morning's workshop topics, drawing upon my experience in the Singapore context.

Fulfillment of Contract

2. In the area of fulfillment of contract, both the procuring entity and the contractor are bound by and are required to perform whatever terms and conditions have been agreed in the contract concluded. Clearly, if the contractor defaults in performing any part of his obligations, the procuring entity would have a right to terminate the contract. But, under what other circumstances could the procuring entity terminate or rescind the contract? To a large extent, it would be dependent on what specific terms that had been provided in the contract for termination. In high value or complex projects, where the risk of failure is correspondingly high, such as the contracts for the construction of the laboratory building or for the mainframe from Economy A which imposes certain export restrictions, the procuring entity might find it in its interest to incorporate comprehensive provisions identifying the specific

circumstances allowing for termination by the procuring entity. Such provisions are important particularly in international contracts where one of the parties may not be equally familiar with the applicable law of the contract.

3. Circumstances allowing for termination could include:-

a. Export License on Restricted Goods

Failure by the contractor to obtain or maintain all the necessary export licenses or approvals from the country of origin of the contracted goods.

b. Delay in Delivery

Delay by the contractor to deliver goods or complete the service or works beyond a reasonable period.

c. Force Majeure

Any Force Majeure event relied upon by the contractor to suspend performance beyond an agreed period of time.

d. Suspension or Termination by the Procuring Entity

If the procuring entity is affected by a state of war, or acts of enemy or other circumstances disrupting public safety. Under any of these circumstances, the procuring entity reserves the right to terminate or suspend the contract.

e. Insolvency

In the case where the contractor becomes bankrupt or insolvent or goes into liquidation.

f. Gifts, Inducements and Rewards

Where the contractor or its employees are charged and found guilty of corruption or illegal offerings of gifts, inducements and rewards, particularly to officers in the procuring entity.

4. The contractor may not have defaulted but is affected by a Force Majeure event. A Force Majeure event is any event or situation that is beyond the control of the contractor but prevents or delays the contractor from performing or fulfilling his obligations under the contract. In order to avoid

any doubt as to what constitutes Force Majeure, it is advisable to identify and state all the circumstances, such as Acts of God, war and act of foreign enemies, riots, civil commotion, strikes, lockouts, other labour disturbances and any other circumstances beyond the control of the contractor.

5. It is normally obligatory for the contractor to give formal notice to the procuring entity within a certain number of days after the start of the Force Majeure event, and to provide some form of evidence. It is also acceptable that Force Majeure events affecting the contractor's sub-contractor could similarly be considered grounds for giving extensions of time to the contractor. The required time is often difficult to determine. The duration of the Force Majeure event itself could be very short, e.g. in an earthquake the duration can be measured in seconds, but the recovery from damage may be protracted. For this reason, the Force Majeure clause should also call upon the Contractor to mitigate the consequences of any delay caused by the Force Majeure event.

6. As I had indicated earlier, the procuring entity may want the right to terminate the contract in event that the Force Majeure extends beyond a certain duration and its continued delay might affect the success of the procuring entity's overall project. Under such circumstances when the contract is terminated not owing to the default of the contractor, an acceptable settlement with the contractor would be for the procuring entity to pay for all the goods, services or works completed and accepted by the procuring entity. On the other hand, the procuring entity may claim the return of any advance payment made to the contractor.

7. In construction procurement, proper management of the construction phase by a team of dedicated professionals or experts is essential for a successful completion of the construction work because of the complexity of the project. It is standard practice in Singapore's construction industry to employ an architectural consultant to oversee and be responsible for the whole construction project. Additionally, mechanical and electrical engineering consultants should be employed where necessary. A project manager is also appointed to ensure proper co-ordination of the construction works, and a supervisory officer to represent the procuring entity to monitor progress of the project, authorise progress payments and decide on any changes to the works requirements. Regular inspections and tests are conducted on works completed based upon which progress payments are released to the construction contractor.

8. While much can be done to oversee and control the construction works to ensure required quality standard and specifications are met, the success and quality of the construction would depend also on how the construction company and the relevant consultants for the building or construction works were appointed. The procuring entity could consider setting up a central

body to promote quality in construction, and to evaluate the performance of the contractor and the quality of its construction works. For example, a bonus could be awarded to construction companies for good performance.

9. The question is often asked if the contract could be modified after the contract award? Modification of the requirement specifications after tender award should be avoided or minimised for obvious reasons. Numerous changes at this stage reflect possible poor planning or drafting of requirement specifications at the upstream tender stage, and may cause complications and project delay. For this reason, any contract changes should be subject to properly scrutiny and approval by authorised officers in the procuring entity. Nonetheless, contingency work variations especially in construction procurement are often inevitable because of the uncertainty of site and other conditions. An approved contingency sum could be pre-approved and set aside for such purposes.

Inspection and Acceptance of Supply

10 An inspection plan for testing and acceptance before and/or at delivery of the equipment or completion of the works is always necessary to ensure that the minimum requirement specifications have been met. The procuring entity has to decide on the number and extent of the inspections and tests. In simple purchases, such as for ready-made or off-the-shelf products, a visual inspection at time of delivery might be adequate, particularly if the product comes with an extended guarantee and some assurance of minimum mean-time-between-failure performance verification. In more complex procurement involving design and build or special customisation effort, more elaborate inspection and testing requirements could be implemented to assure maintenance of consistent quality at critical stages of the product or project development. Such inspections and tests could include:-

- (a) Preliminary Integration Test (PIT)
- (b) Qualification Acceptance Test (QAT)
- (c) Factory Acceptance Test (FAT)
- (d) On-Site Acceptance Test (OSAT)
- (e) Integration Checkout & Installation Test (ICIT)
- (f) First Article Inspection (FAI)

11. The government may opt to perform the inspection and acceptance tests on its own if it has trained engineers with the capability. Generally, however, it is difficult to maintain such a body of people with the relevant expertise to perform acceptance of the diverse range of procured equipment. An alternative arrangement where the government does not have fully trained inspectors is to have the contractor perform the acceptance tests in the presence of the procuring entity's representatives who will subsequently endorse the acceptance certificate jointly with the contractor. If the procuring entity has no in-house expertise or the resources to conduct or witness the tests, it could consider engaging third-party specialist inspectors to do the work.

12. If the government has an existing national programme promoting the adoption of the ISO9000 quality management system, it may also want to consider specifying ISO9000 certification as a pre-requisite or preference criterion in the award of contracts. This could be applied to the construction procurement and other large tenders involving design and development work. Having ISO-certified contractors gives government the assurance of consistent output quality by contractor and government thus reducing the need for frequent inspections and acceptance tests by government.

13. Risk of failure by the contractor to meet the requirement specifications can be minimised by careful selection and pre-qualification of suppliers at the tendering stage. Price must not be the only consideration in tender award. The capability of the tenderer and the quality of its products must be evaluated in deciding on the most optimal or value-for-money offer.

14. However, if the contractor were to fail acceptance test even after repeated tries, the procuring entity would have no choice but to terminate the contract and take remedial actions to salvage the project. It could, for example, look for alternative contractors and invoke its rights under the termination clause of the contract to claim compensation and recover the cost of engaging the new contractor. If it is not feasible to engage another contractor to take over, the procuring entity might consider reviewing the requirement specifications of the contract. The original specifications or test criteria might have been set too high. In the worse case scenario, the procuring entity would have to cut its loss and abandon the project.

Settlement and Registration

15. Payment is normally made after acceptance of the delivery and upon presentation by the contractor of his invoice. Progress payment is also commonly made upon completion by the contractor of agreed major milestones in the contract. A small portion (5%) of the contract price may be retained as a retention fund in the form of a banker's guarantee to cover the defects during the defects liability period of 6 – 12 months. Final settlement of the contract is

reached when the defects liability period expires and the retention fund is returned to the contractor.

16. Actual payment of large sums should be centrally handled by a specialist payment agency under the Treasury. Payment of small sums could be delegated to procuring entity for convenience in payment. Centralisation of payment under the Treasury ensures that a single agency has visibility and control of all the government funds for better management and investment purpose.

Post Evaluation of Project

17. On post-evaluation of project, I think the procuring entity would be in the best position to co-ordinate the evaluation as it has dealings with all other agencies involved in the procurement, such as the technical project managers, the user agencies that requested for the procurement, and the finance agencies that received the order for payment. Such post-evaluations are often carried out as a matter of course at the end of the contract. However, I believe that the benefits of and the need for post-evaluation are often difficult to establish for the following reasons:-

- a. Assessments by officers involved in the procurement for the equipment are often seen as not completely objective. This limits the usefulness of the evaluation for use as a measuring tool.
- b. There is no clear way to apply the evaluation results in future procurement tender selection.

For these reasons, I must caution that the procuring entity should carefully determine the objectives of performing post-evaluation especially if the results are intended to be used public in the selection of future tenders in which the evaluated contracted participates.

**Asia-Pacific Economic Cooperation
Workshop on Government Procurement Practices
Kunming, China, July 14-18, 1999**

**New Methods and Future Development
Presentation by Nigel Shipman, Director of Government Supplies,
Hong Kong, China**

The presentation will begin by looking at the features of the Hong Kong Government Supplies Department's (GSD) procurement system. The Department purchases goods and related services for all departments of the Hong Kong SAR Government and many non-government public sector organisations. (There are separate arrangements for public works contracts in Hong Kong). In 1998-99 it arranged over 4,600 supply contracts worth HK\$5,010 million (US\$650 million), for products manufactured in 36 countries or administrative regions. Hong Kong, China is a signatory to the WTO Agreement on Government Procurement and purchases within the scope of the Agreement are effected by tendering, with contracts approved by a tender board, though less formal and administratively simpler arrangements may be followed for low value purchases.

2. GSD already maintains an Internet Home Page with information on its procurements, though tender documents have to be sent out by post and tenderers must deposit their offers in the tender box by the stipulated time. As part of the Hong Kong SAR Government's programme to promote the electronic delivery of public services, GSD is currently developing an electronic tendering system which is planned to be operational by January 2000. The electronic system will be operated by a contractor on a subscription basis, though the existing manual system will be maintained and suppliers will have a choice which system they use to submit their tenders. The services to be provided by electronic means to subscribers include -

- registration of suppliers;
- notification of tenders;
- issue of tender documents;
- receiving and responding to enquiries;
- submission of tender offers; and
- notification of contract award.

There will be a total security solution that ensures privacy, authenticity, integrity and non-repudiation. This will be assisted by the establishment of a Public Key Infrastructure for Hong Kong and a clear legal framework for the conduct of electronic transactions.

3. If tendering through electronic means were to be introduced for procurements for the National Laboratory construction project, this would provide a more efficient mode of delivery but would not necessarily change the principles inherent in the tendering process. In particular, APEC's non-binding principles on government procurement, viz transparency, value for money, open and effective competition, fair dealing, accountability and due process, should not be diminished or repudiated by the introduction of an electronic tendering system. Electronic tendering may bring many business advantages, in particular by enabling documents to be transmitted much faster and cheaper than would be possible if post or courier services were used. An electronic tendering system may enable the purchasing organisation to access a wider range of potential suppliers, including geographically distant suppliers, and this may bring more competitive tender offers. By being able to download tender documents round the clock and to submit their bids instantaneously, tenderers would gain more time to prepare their proposals and may therefore be better able to ensure that their proposals satisfactorily meet the needs of buyers. The availability of an easy-to-use and rapid enquiry and response function may also help to reduce the risk of misunderstanding of the purchaser's requirements. Instantaneous transmission also opens the possibility of shortening the procurement process. An electronic tendering system could also bring lower administrative costs for the purchasing organisation and for tenderers.

4. Turning to the future development of tendering methods, tendering as a method of procurement has the advantages of being fair and transparent and it facilitates accountability. However, there may be a poor public perception of government procurement which sometimes associates tendering with the acquisition of cheap, low quality products and services. End-users sometimes complain that they have not through the tendering process acquired the product that is best suited to their needs. Moreover, in certain market situations, tendering may not produce a competitive response. If over-elaborate procedures are embedded into the tendering system, the procurement process may be expensive in administrative costs and the time of acquisition may be delayed, making tendering less suitable for low value purchases. Of particular concern is the absence of an incentive scheme to reward good performing suppliers. The possibility of losing the business when the contract comes up for retender may lead the supplier to try to recover total costs, including set-up costs, during the initial contract term. Moreover, if the supplier has sufficient non-government business to keep his plant busy, the government organisation may not be his preferred customer.

5. There are various means by which traditional tendering practices may be modified to address some of these concerns. As already noted, electronic tendering may provide a quicker, more convenient, cheaper and more user-friendly service. The making of longer term contracts may provide the supplier with an incentive to invest in the business relationship. Prequalification or two-stage tendering may ensure that tendering is confined to suppliers who are known to be capable of meeting the requirements. Marking schemes may be used to give more weight to quality as against price in the tender evaluation and to encourage tenderers to submit alternative proposals which bring added value. Framework agreements, by which more than one contractor is contracted to supply but without commitment on the quantity to be purchased over the contract term, may ensure that competition between contracted suppliers is maintained throughout the contract term and may thus be particularly suitable for mass-produced, high technology products where tendered models and prices may rapidly become outdated.

6. The Internet and related technologies are opening up new purchasing methods. Some purchasing organisations already have electronic product catalogues which display the range of available products and prices, with suppliers maintaining the content of their page of the product catalogue and providing updates to product features and prices, so that end-users may select from the catalogue the product brand that is available on the most favourable terms. More comprehensive packages of products and services are being assembled. Companies known as 'informediaries' provide an electronic catalogue for particular product categories, together with search engines and all the information on which to base a purchasing decision. Both consumer and business purchasing through the Internet are growing exponentially and the time may come when Internet trading will be the norm not the exception among businesses. These developments have been widely welcomed by purchasers as they may help to strengthen their position in the supply market, by providing a more comprehensive search and analysis to find the best available offer and by making alternative sources of supply more readily accessible. These developments may open up new possibilities for government purchasing and may enable it to become truly international, particularly as suppliers themselves may seek access to a wider range of government markets. Governments may need to take account of these developments and consider the implications for their procurement rules.

*Government Supplies Department
Hong Kong, China
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APEC WORKSHOP ON GOVERNMENT PROCUREMENT PRACTICES

July 14-18, 1999 Kunming, China

Summary Record

1. The APEC Workshop on Government Procurement (GP) Practices was held in Kunming, China from July 14-18, 1999. The workshop was attended by the representatives from the following member economies: People's Republic of China; Hong Kong, China; Indonesia; Republic of Korea; Malaysia; New Zealand; Papua New Guinea; Republic of Philippines; Singapore; Chinese Taipei; Thailand; United States; and Vietnam. Mr. Nigel Christopher Shipman from Hong Kong, China, Mr. Koh Kok Kiang from Singapore, Mdm. Hajjah Kamesah Abu Baker from Malaysia, Mr. James Matthew Glynan from New Zealand, Mr. Peter Bennet from United Kingdom, Mdm. Susan Alesi from US and Mr. Bertrand Al-Sue from World Bank Resident Mission, Beijing attended the meeting as keynote speakers.
2. The opening ceremony was chaired by Mr. Zhang Shaogang, Deputy Director of the Division for APEC and ASEM Affairs, MOFTEC. He first introduced the distinguished guests present at the opening ceremony, including Mr. Shao Qiwei, Vice Governor of Yunnan Province, Mr. Chi Haibin, Commissioner of Standing Committee of the National People's Congress, Mr. Peng Muyu, Director-General of the Bureau of Trade and Economic Cooperation, Yunnan Province, Mr. Yi Xiaozhun, Deputy Director-General of the Department of International Trade and Economic Affairs, MOFTEC, Mr. Zhang Tong, Deputy Director-General, Department of Budget, Ministry of Finance, Mr. Cao Jianfang, Deputy Director, Bureau of Finance, Yunnan Province and Mr. Xu Zhixin, Vice Mayor, Kunming Municipality. Mr. Yi Xiaozhun read the opening remarks on behalf of Mr. Long Yongtu, Vice Minister of Foreign Trade and Economic Cooperation, who, due to urgent business, could not attend the workshop in person. In his opening speech, Mr. Long Yongtu stressed the significance of government procurement by stating that it was an important component of public finance and served as a mechanism to achieve optimal allocation of public resources. He stated that the Chinese government had fully realized the disadvantages of irregular government procurement practices and was taking an active attitude towards establishing an open, transparent and competition-friendly government procurement system. He believed the Workshop would enhance the exchange of information and experiences between APEC members and help better understand rules and implementation of government procurement. Finally he wished the Workshop a complete success. Mr. Shao Qiwei delivered a speech in which he first extended his warm welcome to all the participants of the meeting on behalf of Yunnan provincial government. Then he briefed his audience on the economic development and potentials of Yunnan province and hoped APEC to promote the cooperation between its member economies

and Yunnan province in trade and investment. He finally wished all the participants a pleasant stay in the beautiful spring city of Kunming. Mr. Chi Haibin also made a speech in which he stated that China had conducted experimental government procurement practices in some regions with favorable results. He pointed out that government procurement could create a business environment of fair play so as to encourage the development of competitive enterprises, reduce the spending of government funds and curb the corruption from taking place. He stated that the legislation on government procurement had been included in the legislation plan of the Ninth National People's Congress and would be concluded within its term.

General Introduction of Government Procurement

3. After the announcement of meeting moderators, the program agenda was adopted. Mr. Yi Xiaochun, Deputy Director-General, DITEA, MOFTEC moderated the morning session of July 14. Mr. Bertrand Ah-Sue presented his keynote speech in which he gave a general introduction on the Government Procurement Practices. After touching briefly upon the current situation of government procurement practices in China, he elaborated on the overall considerations and basic considerations when conducting government procurement. He reiterated that equal treatment and transparency were the basic elements in creating a fair and comfortable environment for all the bidders. His speech also dealt with the topics of competitive bidding and government regulations.
4. Then the meeting launched into a spirited discussion that centered upon public opening of bids and interpretation of procurement laws and regulations. Singapore wondered whether it was necessary to read out the names and other detailed information of the bidders and commented that it might not be realistic for all the bidders to attend the bidding. He also pointed out that the different interpretations of regulations might pose a challenge. Philippines sympathized with Singapore's position but insisted that as long as all the bidders have been officially invited and informed of the exact date and place of bid opening, the procuring entity could not be at fault for the bidders absence. Chinese Taipei stated that at the time of bid opening, the name of bidders may be announced under a pseudonym and explained that their interpretation of laws and regulations lies with a sole responsible entity. Indonesia commented that it was difficult for developing economies to conform to the requirements of the World Bank in its projects. Malaysia stated that his economy followed similar methods of opening bids with Philippines and Chinese Taipei and expressed his concerns about the validity of bidding information, especially for international bidders. Hong Kong, China pointed out that confidentiality was required out of commercial consideration and therefore public opening of bids should be conducted with discretion. Mr. Al-Sue stressed the importance of transparency and that during bid opening, all-important information about the bids should be read aloud. Only in this way can bidders feel comfortable about the bidding process. In the end of the morning session, Mr. Yi Xiaozhun from MOFTEC believed that China would benefit the most from this workshop when representatives from APEC members contributed their knowledge and experiences in government procurement practices.

Stage I Preparation for Procurement

5. Chaired by Mr. Bertrand Ah-Sue, the afternoon session started with the keynote speech “Stage I Preparation for Procurement” presented by Mdm. Susan Alesi from the United States. Her presentation covered the following topics: development of government procurement law, budget and evaluation, and composition and responsibilities of the procuring entity.
6. During the discussion session, UK asked how to distinguish between single tendering and competitive negotiation and wondered whether US had done researches to ascertain the value of small business set-sides which are not adopted in UK. Hong Kong, China inquired whether service contracts in US are open to international bidders. Philippines wondered whether private companies lodge complaints against government departments for their irregular practices. Mdm. Alesi responded that small businesses concerned could resort to General Accounting Office or bring their cases to courts if relevant laws or regulations are not followed. New Zealand asked whether such challenges from small businesses would delay the award of contracts. Mdm. Alesi answered that the contracts would not be awarded if challenges were raised within a certain period. Chinese Taipei was concerned that the system of small business set-sides could lead to possible restrictions on APEC members. Malaysia asked for clarification of the definition of small businesses and ways to cope with fraudulent behavior in small business set-sides. Mdm. Alesi replied that in such cases the unsuccessful offerers could challenge the award of contracts and stressed that it was a basic principle that all the tenderers should be responsible and honest. Singapore enquired if there is any specific threshold value in the application of the Buy American Act under which domestic suppliers or supplies are given preference over foreign suppliers or supplies, and if not how does the US position the Act in respect of the WTO-GPA?. Mdm. Alesi clarified that there is no set limit under the Buy American Act, i.e. it applies for any value of procurement. However, she added that suppliers or supplies from economies that are signatories to the WTO-GPA are treated on an equal foot as domestic ones.

Stage I (continued)

7. Then Mdm. Alesi continued her presentation that focused on the selection of procuring method. In the discussion session that followed, Hong Kong, China inquired whether it was permitted to negotiate with the lowest bidder to further reduce the price after the tender was conducted. Mdm. Alesi responded that competitive negotiation and sealed bidding present two different cases and the basic principle was for the contracting officers to establish a reasonable price through market research. She further explained that sealed bidding leaves no choice for the contracting officers but to accept the lowest bid. Hong Kong, China commented that their contracting officers could negotiate with the lowest bidder. Thailand asked whether it is allowed to give out the information about government estimates. Mdm. Alesi explained that there were no specific rules governing the release of

government estimates. Chinese Taipei considered that giving out government estimates would facilitate suppliers to offer best prices. Philippines asked about measures to manage risks incurred by inflation after the contract was awarded. Another question was raised as to whether it is possible to readjust the price 10% up or down through negotiation when inflation occurs. A few other questions were also put forward about domestic preference, multi-award contracts and modifications of tenders.

Stage I (continued)

8. Mdm. Susan Alesi chaired the morning session of July 15 and she first gave a brief introduction to the keynote speaker Mdm. Hajjah Kamesah Abu Baker from Malaysia, who, then presented her keynote speech entitled “Preparation for Tender: Malaysia’s Experience”. She started her presentation by stating that the prime objective of the Malaysian government procurement is to support government’s programs by obtaining value for money through acquisition of works, supplies and services. Then she elaborated on the following topics: government procurement policies and principles, procurement entities, laws and regulations related to government procurement, registration of companies, types and mode of procurement, procurement processes and selection of procuring method. She concluded that the Malaysian government was practicing an open procurement system.
9. A discussion session followed. Chinese Taipei wondered whether government regulations and procedures in Malaysia were applied to resale purpose procurements of government companies. Singapore inquired about the registration of international tenderers in Malaysia. Mdm. Alesi wanted to know whether registration was similar to pre-qualification. The speaker gave a negative answer and Indonesia asked about the period of validity of foreign registration. Mr. Ah Sue wondered whether foreign contractors would not be unfairly treated by this compulsory registration. Indonesia asked about mechanisms in choosing the best supplier from among a large number of tenderers. Vietnam asked for clarification of the responsibilities of procuring entities. New Zealand wanted some detailed information about registration and distribution of tender documentation.
10. During the second half of the morning session, the discussion was focused upon the Malaysian National Registration Scheme. Malaysia held that the registration was to ensure the quality of participation in government procurement and that their experience proved its effectiveness. Mdm. Susan Alesi commented that in the US the quality of tenderers were controlled through pre-award survey that depended largely on the past performance of the given company. Mr. Ah Sue expressed his doubts about the effectiveness of the registration method. Representatives from other member economies also contributed their comments on that issue. Chinese Taipei commented that registration was not adopted in his economy and tender documents were open to all, while Malaysia explained that tender documentation was only available to registered companies. A few specific questions were also raised about evaluation of tenderers. Mr. Ah Sue inquired

about the practice of confidentiality adopted in evaluation of tenders in Malaysia. Hong Kong, China asked whether product samples were needed for evaluation process and how to confirm their origin. China asked a question about challenge procedures and quality checking mechanisms in Malaysia. Chinese Taipei inquired about the relationship between the Ministry of Finance—the central procurement agency and the procuring board. Other questions put forward were concerned with the staffing of financial and technical evaluation committees and how to reconcile the financial and technical proposals from respective committees.

Stage II Implementation of Government Procurement

11. Mdm. Hajjah Kamesah Abu Baker from Malaysia chaired the afternoon session. The keynote speaker Mr. Jim Glynan made his presentation under topics including: pre-qualification, the calling of tenders (solicitation) and tender procedures. With the case study of Parliament buildings he illustrated the whole process of the implementation of government procurement in New Zealand.

12. A discussion session duly followed. Chinese Taipei inquired about the amount of bid bond (contractors) and professional indemnity insurance (consultants) that should be submitted. Singapore asked about the timetable for the return of distributed questionnaires and wondered whether bidders were allowed to submit them later than the deadline. Mr. Ah Sue wanted to know whether pre-qualification was meant to limit the number of tenderers. He cautioned that the use of the point system may allow the pre-qualification of companies that were financially sound but technically incompetent or vice versa. Then Malaysia stated that in their registration scheme tenderers had to obtain a minimal scoring in both financial and technical capabilities to qualify for the award of contracts. Philippines asked about ways to determine the financial status of tendering companies. Mr. Glynan explained that in New Zealand the tenderer's capabilities were investigated by credit-rating companies, and in response to Mr. Ah Sue commented that the evaluation of joint venture would be a difficult issue. During the last part of the discussion session, questions were centered around the opening procedures. Chinese Taipei wanted to know the difference between bid bond and performance insurance and their respective amount. Singapore inquired about the time length of tender opening and asked whether the information of tender were released after the opening. Malaysia wondered whether bidders were compensated for if government withdrew its approval and whether new bidders were considered when the opening was delayed. China inquired about how to determine a reasonable number of tenderers and the optimal way to handle tender opening.

Stage II (continued)

13. The morning session of July 16 was chaired by Mr. Jim Glynan, who first introduced the keynote speaker Mr. Bertrand Ah Sue to the participants. Then Mr. Ah Sue continued to elaborate on stage II implementation of procurement. First he expounded the process of

evaluation of tenders by giving his comments and suggestions about the following topics: principles of evaluation; principles defined in tender documents; clarification, moderation, negotiation after opening of tenders; interference of government officials and preference margins. Then he briefly talked about the award of contract with special emphasis on lowest bid or a bid that was too low. He pointed out that in China the low bids offered might imply poor financial qualifications of bidders and therefore might lead to quality problems in projects and a closer scrutiny of the bid is necessary. He added however that if the bid is the lowest evaluated response one and that bidder has the financial and technical capabilities to execute the contract, he must be awarded the contract. He suggested that there was still room for improvement in China's cost estimates of contracts. The last topic Mr. Ah Sue touched upon was signature of contracts that started a spirited discussion about the relation between award and signature.

14. The discussion after the topic of evaluation was focused upon deviations in submitted bids, the signing of bids, how to obtain value for money for technical specifications, and interference of government officials. Indonesia wondered about how to define minor deviations and major deviations. In response to the question of deviations in construction bids, Mr. Ah Sue observed that other than the method of construction it was important to follow the process of evaluation defined in the bidding documents. Hong Kong, China commented that deviations were not allowed in essential features of tender specifications and that less important features could be more flexible. Hong Kong wondered whether a bid not properly signed could be considered a valid one. Singapore commented that in Singapore some benefit of doubt is given to allow for correction of errors or omissions which are assessed to be genuine, and minor deviations from technical specifications were acceptable. Such omissions could include unsigned bids (technically, these are bids which are signed in the wrong place), but tenderers under such circumstances would not be allowed to change any part of the tender offers. US observed that in sealed bidding they were strict with rules with only minor irregularities allowed and most construction bids belonged to sealed bidding, and that construction bids must be signed. Malaysia observed that bids must be signed, though minor deviations were allowed. Indonesia raised a question about the interference of government officials. Mr. Ah Sue observed that nobody should interfere with the tender committee's work which worked according its own mandate, and that disagreement should be put forward in a proper way. New Zealand distinguished between the functions of tender review board and tender evaluation committee in his economy. The discussion after the topic of award of contract centered around low bids. Hong Kong, China stated that some of bids might even be lower than the local prices of raw materials involved and wondered about how to handle such bids. Mr. Ah Sue commented that such bids should be considered if their reasons were justified. New Zealand observed that it was important to anticipate the risks before the award of contracts and that low bids should be scrutinized. Philippines wondered what if a bidder intentionally submits a low bid in order to win the contract and request for variation orders/contract modifications during contract implementation to recover. Mr. Ah Sue pointed out that low bids and modifications were not necessarily related. During the final discussion session after Mr. Ah Sue concluded his lecture on signature of contracts,

questions put forward included distinction between acceptance and signing formality and duration of performance bond, etc.

Stage III Fulfillment of Contract and Project Evaluation

15. Mr. Nigel Shipman from Hong Kong, China moderated the afternoon session. Mr. Peter Bennett gave his keynote presentation on contract management. He first briefed on the GP system and its development in UK. He covered following topics: value for money, the concept of management cycle, risk assessment, relationships between clients and suppliers, management problems and contract review. He concluded that the aim of effective contract management was to make sure that value for money was achieved by reducing time and cost overruns to a minimum. After the coffee break Mr. Bennett moved on to talk about WTO developments and the three issues currently addressed, namely, revision of GPA, GATS and Transparency Agreement.
16. After Mr. Bennett's presentation on contract management, many representatives asked about how to remedy the situation if the contract of procurement was terminated. Chinese Taipei wondered whether it was necessary to conduct another procurement or to choose the second bidder. Mr. Ah Sue observed that the logical way was to pick the second bidder as competition has already taken place. New Zealand commented that performance bond proved necessary to recover any additional costs incurred due to such a situation. Mr. Bennett remarked that intellectual property involved in the transfer of contract would further complicate the situation. Malaysia wanted to know that which party should bear the expenses in the reopening of tender. China inquired about the differences between commercial contracts and government procurement contracts. After Mr. Bennett's introduction of WTO developments, the questions were focused upon the principles of non-discrimination and transparency. China asked whether public utilities were covered by the new GPA and whether China's provinces could formulate their own thresholds and buy local policies if China became a signatory to GPA. China called for participants of the workshop to give suggestions on making non-discrimination policies on GP. Indonesia wondered whether the new GPA provided more opportunities for developing economies.

Stage III Fulfillment of Contract and Project Evaluation

17. Mr. Peter Bennet moderated the morning session of July 17 and the keynote speaker was Mr. Koh Kok Kiang from Singapore. Mr. Koh introduced himself and briefed the audience on the basic situation of government procurement. He listed the circumstances for termination of contract under the topic of fulfillment, including export license on restricted goods, delay in delivery, force majeure, suspension or termination by the procuring entity, and insolvency, etc. Under the topic of inspection and acceptance of supply he stated that the government had an existing national program promoting the adoption of the ISO9000 quality management system and it might also want to consider specifying ISO9000 certification as a pre-requisite or preference criterion in the award of contracts. Under the topic of post evaluation of project, Mr. Koh pointed out that the procuring entity should carefully determine the objectives of performing post-evaluation.

18. The discussion that followed first centered upon the topics of inspections and tests, liquidated damage, and quality maintaining system in general. Hong Kong, China observed that 10% liquidated damage sometimes failed to reflect the actual damage incurred in the delay of contract. Chinese Taipei proposed two alternatives to ensure the quality of equipment, viz, requirement of bond and deferring of payment. New Zealand held that a contract quality plan for the given project would be more important and the application of ISO9000 standards was costly and difficult to manage. Chinese Taipei questioned the effectiveness of ISO9000 series standards for the corruption that might be involved in the issue of certificates. Questions during the second part of the discussion were mainly concerned with bonus point system, quality assurance, exchange rate variations, force majeure, and the position of consultants in procurement. New Zealand wondered whether different views might arise as to the bonus points between supervising authorities and contractors. Malaysia asked for clarification of corruption or illegal offerings, of inducements and rewards. Hong Kong, China observed that in the inspection of goods it was important to tell the contractors to remedy their quality assurance system when faulty goods were found. New Zealand commented that it might be desirable to terminate the contract in a force majeure event and suggested that death of the contractor might be a special case of force majeure, particularly for a small family business or a consultancy firm. Chinese Taipei asked whether any APEC member had local carrier policy in the transportation of imported equipment.

Stage IV New Method and Future Development

19. Mr. Koh Kok Kiang from Singapore chaired the afternoon session. Mr. Nigel Shipman from Hong Kong, China presented his keynote speech “New Method and Future Development”. His paper covered the following topics: features of the Hong Kong Government Supplies Department’s procurement system, the development of an electronic tendering system for GSD, how electronic tendering might change procurement for the National Laboratory construction project, and future development of tendering. He pointed out that the electronic means would provide a more efficient mode of delivery but would not necessarily change the principles inherent in the tendering process, viz, transparency, value for money, open and effective competition, fair dealing, accountability and due course. He predicted that the day might come when Internet trading will be the norm, not the exception among businesses.

20. During the discussion that followed, questions were focused upon the development of electronic tendering and the safety problem in electronic transmission. Philippines inquired about the cost in developing electronic tendering system. New Zealand wondered about how to ensure the safety of electronic delivery on Internet and asked about the cost of developing software in the development of electronic tendering system. Vietnam was concerned about the fraud and over crowdedness of data transmission on Internet. Singapore wanted to know what problems we might face in Internet tendering. Korea was concerned about the problem of information authenticity. Singapore wondered whether

any difficulties might arise in processing complicated tenders through Internet.

Free Discussion Session

21. The free discussion session was chaired by Mr. Yi Xiaozhun from China, the topic being “WTO Future Negotiation on Government Procurement”. He first briefly reviewed the history of WTO and GPA, then he called for Mr. Peter Bennet to brief the workshop on WTO work on government procurement. Mr. Bennet mainly touched upon the basic situation of the GPA working group on transparency. Then participants contributed their comments and experiences on that issue. Ms. Susan observed that the new GPA should fully reflect the current development of the business world, and she was concerned about the problem of terminology where different economies might use different names for similar practices. Mr. Yi Xiaozhun commented that China did not yet have relevant laws and regulations for government procurement and that there were suspicions in China about the accession to GPA. Many participants expressed their concerns about market access of foreign companies and the policies of transparency.

22. During the closing session, all the participants expressed their sincere thanks to the Chinese government for inviting them to this workshop. They also expressed their appreciation to the organizers of the workshop for their excellent work and hospitality. Thanks were also expressed to all keynote speakers for their contribution to the success of the workshop.