

ASIA-PACIFIC ECONOMIC COOPERATION
WORKSHOP ON GOVERNMENT PROCUREMENT PRACTICES
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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.