

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.