

Key Concerns with the Government Procurement Bill 2025

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The Government Procurement Bill 2025 is presented as a reform to strengthen transparency and accountability in public procurement. In reality, the Bill is deeply problematic. It entrenches ministerial discretion, shields decision-makers from scrutiny, and hands disproportionate powers to officials without adequate safeguards. Instead of delivering genuine reform, the Bill risks worsening opacity and abuse within Malaysia's procurement system.

This fact sheet highlights the most serious flaws in the Bill that must be addressed before any legislation is passed.

1. Ministerial Control

- **Clause 10(1)(a), Sch. 1** – Ministers approve mega-contracts with no financial ceiling.
- **Clause 13(2)-(4)** – Minister is not bound by the recommendations of the Procurement Board.
- **Clause 12(8)** – Minister decides in case of a Board deadlock.
- **Clause 11(1), Sch. 2** – Minister influences Board appointments.

Analysis: The Minister effectively acts as both regulator and participant in procurement decisions. This dual role undermines basic safeguards against conflict of interest and concentrates decision-making in the very office that procurement rules are supposed to restrain.

2. Appeals Without Independence

- **Clause 61(6)** – Minister sets complaint procedures.
- **Clause 61(2)** – Complaints must be routed through the procuring entity (e.g. Ministries, statutory bodies, implementing agencies) itself before escalation.
- **Clauses 63 & 74** – Appeal Tribunal members, secretary, and officers are appointed by the Minister.

Analysis: The Bill establishes a Government Procurement Appeal Tribunal, but it is structurally compromised. Because all appointments are controlled by the Minister, the Tribunal cannot be regarded as independent. Moreover, forcing complainants to raise grievances with the very agency they are challenging is meaningless. Instead of functioning as a neutral adjudicator, the

Tribunal risks being an extension of ministerial authority, offering little more than symbolic oversight.

3. Registry Powers and Market Access

- **Clause 17** – Only registered suppliers may participate in procurement.
- **Clause 26** – Registrar may reject requests for review without reasons.

Analysis: The Registry becomes a gatekeeper of who can or cannot compete for contracts. With no clear criteria or oversight, this opens the door to political patronage, cronyism, and exclusion of legitimate suppliers. It effectively allows for procurement cartels to be constructed by administrative discretion.

4. Exemptions and Loopholes

- **Clause 2(2)** – Ministers can exempt entire programmes from procurement procedures.
- **Clause 12(7)** – Board decisions remain valid even if procedures are breached.
- **Clause 24** – Minister has power to exempt anyone from registration.
- **Clause 25** – No duty to disclose procurement information, such as who is exempted.
- **Clause 30** – Minister sets procurement rules in emergencies.
- **Clause 32** – Public Interest Certificates can declare a procurement crucial for “public interest” to override delays or suspension by any objection or appeal under the Act.

Analysis: These provisions create structural loopholes that render the Bill’s checks and balances meaningless. By giving Ministers broad exemption powers, the Bill embeds ways to bypass procedure and transparency whenever politically expedient.

5. Enforcement Overreach

- **Clause 45** – Ministers or State financial authorities can authorise any officer under their purview to exercise powers of investigation and enforcement
- **Clauses 47–50, 53** – Powers include search and seizure, access to computerised data, and forfeiture.
- **Clause 49** – Warrants remain valid even if defective.
- **Clause 55** – Courts barred from granting relief except in very narrow circumstances.

Offences under the Bill:

- **Clause 27** – Unapproved double registration.
- **Clause 35** – Transferring/assigning contracts without approval.
- **Clause 37** – Failure to disclose interest in any procurement.
- **Clause 38** – Undue influence in procurement.
- **Clause 47** – Damaging or tampering with seized items.
- **Clause 59** – Obstruction of officers.
- **Clause 60** – Destruction/concealment of records.

- **Clause 75** – Breach of secrecy obligations.
- **Clause 82** – Submitting false documents or information.
- **Clause 83** – Corporate criminal liability.

Analysis: These provisions confer sweeping police-like powers on Treasury officers, without the checks and safeguards that exist under the Criminal Procedure Code. Even junior officers could be authorized to carry out warrantless searches, seize documents and access digital systems, with minimal oversight. This is compounded by a structural conflict of interest: in many cases, Treasury officers would be investigating their own Ministry.

Worse still, such extraordinary powers are not confined to serious offences like bribery or falsification of records; they extend equally to minor regulatory breaches such as duplicate registration or secrecy violations. The result is a framework where powers designed for grave crimes are applied disproportionately, creating fertile ground for overreach and abuse.

Conclusion & Demands

The Government Procurement Bill, in its current form, is **institutionally dangerous**. It concentrates excessive discretion in ministers, embeds conflicts of interest, creates a registry open to abuse, and arms Treasury officials with investigative powers that even police officers exercise under stricter safeguards. These weaknesses cut directly against the Bill's stated objective of advancing transparency and accountability. Far from enhancing accountability, it risks entrenching abuse in one of the most corruption-prone areas of governance.

C4 Center demands that the Government:

- Delays the tabling of the Government Procurement Bill;
- Provides adequate time and opportunity for stakeholders to review and give feedback; and
- Revises the Government Procurement Bill to address the structural weaknesses and accountability gaps identified above.