

C4 Center Position Paper

PROCUREMENT AS PART OF GOOD GOVERNANCE IN NEW MALAYSIA

Challenges and Recommendations

Procurement as Part of Good Governance in New Malaysia: Challenges and Recommendations C4 Center Position Paper

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1st Web Edition, August 2018.

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1 Introduction

"Public procurement is one of the government activities most vulnerable to corruption and it is a complex problem which covers a wide range of illegal activities."

-Former Auditor General Tan Sri Ambrin Buang

Public procurement remains an important tool for many countries in the world to stimulate economic growth while addressing socio-economic needs. In Malaysia, the government spends more than RM150 billion in procuring goods, works, and services every year. This is equivalent to almost one-fifth of Malaysia's nominal GDP.¹ As this amount of taxpayers' money is extremely huge, it is of paramount importance to ensure that the money is well spent by the government in the best interest of the public.

Thus, it is crucial for the government of Malaysia to have good procurement policies at all levels to ensure that the best value for money is achieved in all government procurement deals in a transparent and accountable manner. Only under such circumstances, can public procurement serve as an effective tool in further boosting economic growth of the country.

Unfortunately, like many other developing countries, Malaysia continues to suffer from problems of wastage, over-pricing, cost overruns, delays, and sub-standard quality in the final delivery of goods, services, and works in public procurement. While some of these problems may be attributed to administrative inefficiency, inexperience or human error in the procurement process, in many cases, they also stem from intentional manipulation and fraud in addition to existing practices of nepotism, cronyism, and corruption at the expense of taxpayers.

¹ Professor David Seth Jones, 'Key Failings in the Malaysian procurement system and how they can be addressed by greater transparency', Institute for Democracy and Economic Affairs Policy Paper 7, 2013, http://www.ideas.org.my/policy-paper-no-7-key-failings-malaysian-public-procurement-system-can-addressed-greater-transparency/

Early this year, former Auditor General, Tan Sri Ambrin Buang, did not mince his words when he criticized that "Public procurement is one of the government activities [that is] most vulnerable to corruption and it is a complex problem which covers a wide range of illegal activities." He revealed that from bid-rigging during the pre-contract award phase to false invoicing in the post-contract award phase, procurement fraud could be perpetrated by those inside and outside of an organization. Many of these cases are related to government procurement at various levels of government, federal, state and local as well as statutory bodies, despite multiple measures to prevent it.²

In fact, Malaysia is ranked 44th among 176 countries, scoring only 49 out of 100 possible points in the Transparency International's (TI) Corruption Perception Index (CPI) in 2016.

Malaysia has been party to the United Nations Convention Against Corruption (UNCAC) since 2008. Under Article 9 of the UNCAC, a State Party is obliged to take the necessary steps to establish appropriate systems of procurement, based on transparency, competition, and objective criteria in decision–making, that are effective in preventing corruption.

Such systems, which may take into account appropriate threshold values in their application, shall address:

- The public distribution of information relating to procurement procedures and contracts, including information on invitations to tender and relevant or pertinent information on the award of contracts, allowing potential tenderers sufficient time to prepare and submit their tenders;
- The establishment, in advance, of conditions for participation, including selection and award criteria tendering rules, and their publication;
- The use of objective and predetermined criteria for public procurement decisions, in order to facilitate the subsequent verification of the correct application of the rules or procedures;
- An effective system of domestic review, including an effective system of appeal, to ensure legal recourse and remedies in the event that the rules or procedures established pursuant to this paragraph are not followed;
- Where appropriate, measures to regulate matters regarding personnel responsible for procurement, such as declaration of interest in particular public procurements, screening procedures and training requirements.³

This paper seeks to review the existing procurement policy of Malaysia, identify its problems and propose recommendations for the consideration of Malaysian governments at federal, state and local level to ensure taxpayers' money is well–spent, as well as to weed out cronyism, nepotism and corruption from procurement processes, in line with our international obligations under the UNCAC.

² 'Public procurement most vulnerable to corruption, says Auditor-General', *The Malay Mail Online*, http://www.themalaymailonline.com/malaysia/article/public-procurement-most-vulnerable-to-corruption-says-auditor-general

³ Article 9 of the United Nations Convention Against Corruption, https://www.unodc.org/documents/treaties/UNCAC/Publications/Convention/08-50026_E.pdf

2 Overview of Malaysia's Procurement Regime

In Malaysia, the Ministry of Finance (MOF) is responsible for all procurement procedures, both internal and external to Malaysia. The primary functions of MOF in government procurement are in the areas of controlling, enforcement, supervision, reconciliation, usage, distribution and storage of procurement for government departments. It sets out the rules governing procurement in government projects.

Legal and Regulatory Framework

Public procurement in Malaysia is governed by several statutes and government instruments, namely the Financial Procedure Act 1957, the Government Contract Act 1949, Treasury Instructions, Treasury Circular letters and Federal Central Contract Circulars. The Government Contract Act 1949 provides legal validity for the ministries to represent the Government in making procurements and the Financial Procedure Act 1957 outlines the mode of control and management of public finances. The latter lays out procedures for the collection and payment of public monies as well as procedures for the purchase, custody and disposal of public property.

The *Treasury Instructions* outline financial and accounting procedures and regulations that have to be followed in managing and using public funds including procurement in detail. The *Treasury Circulars* are issued from time to time to inform, clarify, implement, improve, and amend certain policies, rules, and procedures regarding the management and use of public money. Finally, the *Federal Central Contract Circulars* are issued to outline several items that have been decided to be centrally purchased.

Objectives

The Malaysian Government Procurement Policies are designed to achieve the following objectives:

• to ensure continuous supply of materials and services to meet the Government needs from the best and reliable sources;

- to ensure efficient, effective and ethical procurement practices to enable the Government to achieve best value for money without compromising on quality, delivery and other price and non-price factors;
- to stimulate and encourage the growth and development of local industrial sectors as a means of transfer of technology and expertise;
- to promote alternative and multiple sourcing through supplier/vendor development.

Principles

The principles that guide the Malaysian procurement policy are:

- public accountability;
- transparency;
- value for money;
- open and fair competition;
- fair dealing.

Government Machinery involved in Procurement

Four levels of government machinery are involved in public procurement, namely: the Federal Government, the 13 State Governments, Local Authorities comprising city councils, municipalities and district councils, and finally statutory bodies.

Categories of Procurement

Government procurement is divided into three categories, namely: (1) works, which include construction and engineering activities; (2) goods, which include the supply of raw, intermediate or finished goods and products; and, (3) services which include engagement of manpower, expertise and consultants for various purposes.

Methods of Procurement

There are three methods of procurement used by the Malaysian government, namely direct purchase, quotation, and tenders.

- **Direct Purchase:** Procurement of goods, services and works up to the value of RM20,000 can be done through direct purchase and suppliers do not have to be registered with the government. For procurement of works, all contractors must be registered with the Contractors Service Center (PKK) and Construction Industry Development Board (CIDB) Malaysia.
- Quotations/closed tender: Procurement of goods, services and works between the amount of RM20,000 to RM500,000 should be done through quotations (at least 3-5 quotations to be invited) or closed tender and all suppliers must be registered with PKK. As for works, the minimum quotations to be invited is five and all contractors must be registered with the PKK and CIDB.
- **Open tender:** Procurement for goods, services and works that are above RM500,000, it has to be done through open tender processes. Similarly, all contractors must be registered with the Government.

The quantum allowed for each type of procurement is illustrated in Table 1.

	METI	HODS OF PROCUREMENT	r
Type of Procurement	Direct Purchase	Quotation/Closed Tender	Open Tender
Goods and Services	Up to RM20,000	RM20,000 to RM500,000	Above RM500,000
Works	Up to RM20,000	RM20,000 to RM500,000	Above RM500,000

Table 1: Types and methods in the Malaysian Procurement System.

Compiled by author based on Malaysia Treasury Circular PK 2.4

Calls for Quotations

Calls for quotations will be published on the notice board of a government agency, and producers/ suppliers/contractors who are registered with the Finance Ministry or CIDB will be invited to submit quotations (bids) through postal mail, courier or email. All bids should be put into a box with two keys held by two different officers. All bids will be evaluated by a technical evaluation committee and a price evaluation committee for goods and services, while only one evaluation committee will be set up for procurement of works. The evaluation will be based on fulfillment of conditions stated in the call for quotation documents, performance of bidders, price analysis, and delivery/completion period. A briefing paper will be prepared for the quotation committee with a minimum of three officers. They will decide on the best offer with reasons stated in the minutes. The decision will be displayed at an agency's notice board and website with names of the successful bidder, offered price, and delivery/completion date.

Announcement of Tender

All tenders will be advertised in at least one local daily in the Malay language and either the MYPROCUREMENT portal (http://myprocurement.treasury.gov.my), The Selangor Online Tender System 2.0 (https://tender.selangor.my/?mid=674) for the Selangor State Government or The Official Portal of Penang State Government (ep.penang.gov.my) for the Penang State Government. Bidders are given a submission period of not less than 21 days for local tenders. For international tenders, the submission period may not be less than 56 days.

Evaluation of Tender

A Tender Opening Committee comprising senior government officers will open and schedule all the tenders and prepare a schedule of prices quoted. All tenders will be accorded a serial number and the name of bidders will be omitted before being submitted for evaluation by two separate committees, *i.e.* a Technical Evaluation Committee and a Financial Evaluation Committee. The Evaluation Committee will make sure bidders fulfill all conditions stated in tender documents, assess technical capacity, financial strength, price, period of completion/delivery, bidder's existing works, project performance supervision report on existing works, and project engineering performance report. The head of agency will submit the evaluation report to the procurement board with the recommended bidder that offered the best value for money for consideration.

⁴ See pages 11-12, 15-17, 28-30, Malaysia Treasury Circular PK 2, http://lpp.treasury.gov.my/

	DECISION	N MAKER
Type of Procurement	Agency Procurement Board	Ministry of Finance
Goods and Services	RM500,000 to RM50 million	Above RM50 million
Works	RM500,000 to RM100 million	Above RM100 million

Table 2: Decision-Makers for Procurement through Open Tender

Decision-Making on Tender

Members of federal procurement boards are appointed by the Finance Minister, while members of state procurement boards are appointed by Chief Ministers of Ministries/Departments (Agency Procurement Boards) for consideration and decision. Procurement Board A will decide on procurement that is above RM20 million while Procurement Board B makes decisions on procurement that is below RM20 million. However, for projects with a tender value above RM100 million for works and RM50 million for goods and services, the tenders require a recommendation from the Agency Procurement Boards to be sent to the Ministry of Finance for a final decision. The Procurement Boards will check the necessary registrations of bidders, ensure procurement procedures have been complied with, check the technical and financial capacity of bidders and make the decision on best value for money, taking into consideration of price, quality, quantity, completion period, coordination cost and other factors.

Announcement of Procurement Decision

Information of successful bidders, with the name of the company, offered price, and period of completion, will be displayed at the procuring agency's notice board and website with a hyperlink to the MyGovernment portal (www.malaysia.gov.my).

Bumiputera Policy

Another key feature of the procurement policy of Malaysia is the preferential treatment for Bumiputera as one of its policies is to encourage and support the evolvement of Bumiputera entrepreneurs in line with the nation's aspirations to create the Bumiputera Commercial and Industrial Community. Procurement of goods and services valuing between RM50,000 to RM100,000 will be open to Bumiputera companies only. They also enjoy preference in terms of price of different percentage for procurement of goods and services from RM100,000 to RM15 million. Procurement of works under RM200,000 is open to Bumiputera companies only. In addition, 30% of the total value of government procurement of construction services is set aside for Bumiputera companies only.

⁵ See pages 11-12, 15-17, 28-30, Malaysia Treasury Circular PK 2.

2 Losses and Cases of Poor Public Procurement

Despite having procurement policies and procedures in place, public procurement in Malaysia continues to be marred by incidents of overpriced purchases, extravagant spending, wastage, cost overruns, delays of completion of projects, and low quality deliverables. Former Deputy Prime Minister Anwar Ibrahim estimated that the country suffers about RM20 billion in losses every year through monetary leakages via corruption, wastage and money laundering.⁶ It is estimated that poor procurement practices in Malaysia causes losses of up to RM10 billion a year,⁷ accounting for about 6% of the total value of Malaysia's public procurement.

There are many glaring examples of problems in the current procurement system of Malaysia. One of them is the megaproject of the East Coast Rail Link (ECRL). The ECRL costs about RM30 billion, but was awarded without open tender at an inflated price of RM55 billion to China Communication Construction Company Limited (CCCC).8 Another example is the procurement of two Scorpene-class submarines by the Defense Ministry for one billion Euros from DCNS in 2002 with alleged kickbacks of RM540 million in the form of commission paid to Perimekar Sdn Bhd, which is purportedly linked to Razak Baginda and that the payment ultimately benefited Najib Razak, then Defense Minister.9 Finally, the beleaguered 1 Malaysia Development Berhad (1MDB), who had no experience in building power plants, was controversially awarded with several power plant projects by the government, such as 2000MW coal plant in Jimmah, Negeri Sembilan, and a RM13 billion power plant project in Batu Gajah, Melaka.10 In both cases, 1MDB failed to meet it contractual obligations.

However, it should be noted that such problems are not confined to megaprojects as illustrated above or at the federal government level, but are also prevalent among state and local governments. In order to examine the scale of the problem, one needs only to turn to the reports of the Auditor General in recent years for abundant example cases.

⁶ "Nothing done to stop RM20b yearly losses", Free Malaysia Today, 1 October 2011, http://www.freemalaysiatoday.com/category/nation/2011/10/01/anwar-nothing-done-to-stop-rm20b-yearly-losses/

⁷ Tricia Yeoh, "CAT in Action: Competency, Accountability and Transparency in the Pakatan States", Penang Monthly, February 2010, copy found at http://www.triciayeoh.com/2010/o/Lcat-in-action-pakatan-rakyat-states/

⁸ Tony Pua, "Liow, why gov't borrowing RM55b if East Coast Rail costs less?", Malaysiakini, 7 November 2016, https://www.malaysiakini.com/news/361906

⁹ See "Dredging up the DCNS Scorpene scandal", Malaysiakini, 23 July 2017, https://www.malaysiakini.com/news/389497

Syed Jaymal Zahiid, "Review direct tenders for power plants, says institute", The Malay Mail, 5 June 2018, copy found at https://www.st.gov.my/en/contents/files/news/2018-06-05/1528165074.pdf

Case study 1: Kuching New Prison Project by Prison Department of Malaysia

This project was procured by the Prison Department of Malaysia. The construction of Kuching New Prison Project costing RM165 million was initially implemented by WMM Holdings Sdn. Bhd. (Developer) through direct negotiation under the Design and Build concept. This project started in May 1997 and was expected to be completed in August 2000. However, notice of termination was issued to the Developer in July 2002 due to the failure of the Developer to complete the project within the contract period, including an approved extension of time. Consequently, TSR Bina Sdn. Bhd. had been appointed through open tender in January 2005 with the contract sum of RM54.9 million to repair and complete the abandoned project after the original contractor was terminated.

The actual total cost of the project was RM221.11 million after taking into account adjustments to the contract price and the issuing of variation orders. The audit conducted from September to December 2010 found that, overall, the implementation of construction works was not satisfactory because the project which should have been completed within 3 years and 3 months took 11 years and 2 months to complete, and the construction cost increased by RM56.11 million (34%) from the original cost, even though the scope of work had been reduced. In addition, there were other weaknesses such as delay in completing the work, poor quality work had been approved for payment, and that the Malaysian Prison Department had no technical personnel to monitor the projects and poor buildings maintenance (AG Report 2010).¹¹

Case study 2: Building Living Quarters for Married Military Personnel by Ministry of Defense

This project was procured by the Ministry of Defense. The Ministry of Defense (MOD) provides Married Quarters facilities to Armed Forces comprising four services namely Navy, Air Force, Army and Joint Forces. Under the Ninth Malaysia Plan, MOD had completed 38 Married Quarters projects with the initial cost of RM1.740 billion. As at December 2011, 46,880 units of various class Married Quarters had been built for the four services.

Audit findings revealed that the overall construction performance of 12 Married Quarters projects built within the Ninth Malaysia Plan and management of Married Quarters were unsatisfactory. Among the weaknesses found was that contractors failed to complete construction within the initial contract period and were given an extension of time from 94 to 1,240 days, completed Married Quarters projects were found to have a number of construction defects and damages and contractors failed to make good all defects/damages within the stipulated period; the project cost increased by RM174.43 million (15.5%) to RM1,297.18 million compared to initial project cost of RM1,122.75 million (AG Report 2011).¹² It was reported that a total of 2,085 complaints of damage were made for the projects combined, including ceiling boards which had rotted through due to leaks in the roof and "bad stench" due to leaks of the sewerage system. The cost for the total of 38 projects ranging from flats to bungalows was initially estimated at RM1.74 billion but ballooned to RM3.21 billion—a cost overrun of 84%.¹³

Page 55, Synopsis – Auditor General's Report for the Year 2010 on the Audit of the Federal Government's Financial Statement, Financial Management and Activities of the Federal Ministries/Departments and the Management of Government Companies, https://www.audit.gov.my/images/pdf/LaporanKAN2011/AGR%20federal%202010%20Synopsis.pdf

¹² Pages 72-73, Synopsis of Auditor General's Report for the Year 2011 on the Audit of the Federal Government's Financial Statement, Financial Management and Activities of the Federal Ministries/Departments and the Management of Government Companies, https://www.audit.gov.my/docs/BI/LKAN2011/Federal/LKAN%202011%20-%20Synopsis%20(ENGLISH).pdf

¹³ Aidila Razak, "Defence Ministry pays RM3.2bil for shoddy quarters", Malaysiakini, 15 October 2012, http://www.malaysiakini.com/news/211730.

Case study 3: Hospital Information System Maintenance Project by Ministry of Health

The project was procured by the Ministry of Health, involving the maintenance of Hospital Information Systems (HIS) for 12 hospitals with a contract value of RM334.02 million. Audit findings revealed that generally, the overall HIS maintenance services were not satisfactory. There were some weaknesses in the management of maintenance services, such as a price difference of RM15 million between the contract awarded through direct negotiation and open tender; overpayment of RM0.54 million to the contractor for claim of vacant/absent HIS project team members; estimated difference of up to RM23.95 million between payment claims made to the Ministry and actual payment incurred by the contractor; hardware which did not require maintenance were included in the list of hardware maintenance causing an increase of RM1 million in maintenance cost; and maintenance cost exceeded the purchase cost of hardware up to 72.5 times (AG Report 2011).¹⁴

Case study 4: Purchase of Shoes for Personnel by Royal Customs Department

The Procurement of shoes for all personnel of the Royal Malaysian Customs Department (RMCD) was managed by its headquarters and, for the period 2009 to 2013, a total of RM6.86 million was spent for the procurement of shoes. Audit findings revealed that in general, the management in the procurement of shoes by RMCD was not satisfactory. As at the end of 2012, the balance of shoes purchased in 2009 was yet to be distributed and a total of 7,659 pairs of shoes worth RM602,089 were damaged and needed to be disposed (AG Report 2012).¹⁵

Case study 5: Kuantan New Court Complex by Prime Minister's Department

The court complex construction project was procured by the Prime Minister's Department and covered 11.01 acres. It was implemented under the Second Economic Stimulus Package with a contract cost worth RM157.34 million. The project started on 8 July 2009 with a contract period of 78 weeks. However, the project was only completed on 17 July 2012 (158 weeks) and was handed over by the Public Works Department (PWD) on 20 July 2012 to the Office of the Chief Registrar of the Federal Court.

Audit findings revealed that while the objective of the Complex construction in providing a more comfortable physical space for the judicial activities in Kuantan, Pahang had been achieved and the construction of the court complex was satisfactory, there were several weaknesses, such as: the construction of the Complex was delayed for 560 days and the cost increased by RM19.56 million due to poor planning in design and scope of works; defects found during the defect Liability Period (DLP) went unrectified; maintenance works during the DLP were not carried out; construction design was neither suitable or practical; construction works did not comply with contract specifications drawings; construction works were not satisfactory; there were differences between the As-Built Drawings and the actual construction; and furniture/equipment were not placed in the proper location (AG Report 2013).¹⁶

[&]quot;Printer maintenance is 72 times purchase price", Malaysiakini, 16 October 2012, http://www.malaysiakini.com/news/211826; and pages 67-68, Synopsis of Auditor General's Report for the Year 2011 on the Audit of the Federal Government's Financial Statement, Financial Management and Activities of the Federal Ministries/Departments and the Management of Government Companies, https://www.audit.gov.my/docs/BI/LKAN2011/Federal/LKAN%202011%20-%20Synopsis%20(ENGLISH).pdf

¹⁵ Pages 16-17, Auditor General Report 2012 - Activities of the Federal Ministries/Departments and the Management of Government Companies, Series 2, https://www.audit.gov.my/images/pdf/LKAN2012/Persekutuan/Siri2/synopsis%20lkan2012%20siri%202%20-%20a5.pdf

¹⁶ Pages 3-4, Auditor General Report Year 2013 – Activities of the Federal Ministries/Departments and the Management

Case study 6: Sultanah Nora Ismail Hospital Upgrading Project by Public Works Department

In 2008, the Public Works Department (PWD) Malaysia issued an offer to Sejagat Bakti Sdn. Bhd. (Sejagat Bakti) to upgrade Hospital Sultanah Nora Ismail, Batu Pahat, Johor with the project costing RM200.70 million. The contract was for a period of 33 months (16 March 2008 to 15 December 2010). Sejagat Bakti was appointed through direct negotiation and on a fast track method by the Ministry of Finance (MOF). This project used the *design and build* method where design and project supervision was done by the contractor through their own consultants. The contractor had appointed 8 consultants who are experts in the field of architecture, civil and structural engineering, mechanical and electrical engineering, quantity surveying, medical planning, medical equipment, and information technology (IT), all which cost RM18.07 million. Meanwhile, the Director of Health Work Branch, PWD acted as a Project Director.

The audit conducted in 2015 revealed weaknesses such as: a delay of 90 days in completing the project, and it was only handed over to Ministry of Health 12 months after the issuance of Certificate of Practical Completion (CPC); the appointment of an inexperienced contractor affected the performance and quality of construction; the contract agreement was signed 8 months after the issuance of the Acceptance Letter; the transportation service and equipment facility amounting to RM801,700 was only approved 9 months after the contract had been signed; transportation service amounting to RM700,700 did not comply with the stipulated standards; Variation Orders (VO) amounting to RM99,409 were carried out after the contract had expired; the CPC was issued although the Operation Theatre and Intensive Care Unit (ICU) could not be used for one to four years; Liquidated and Ascertained Damages (LAD) of RM13.34 million was not imposed on Sejagat Bakti due to the issuance of CPC, although the work was incomplete; The Defects Liability Period (DLP) was extended for another one year without any official agreement as the CPC was issued one year earlier; and the works done were not in accordance to contract specification/incompatible/poor quality which affected the delivery of health services and patient/ public facilities. For example, four units of lift costing RM2.03 million were designed and installed not in accordance to contract specifications which eventually caused some difficulties in transporting ICU beds (AG Report 2014).17

Case study 7: Construction of Tampin Hospital Project by Public Works Department

The contractor Fajarbaru Builders Sdn. Bhd. (Fajarbaru) was appointed by Public Works Department (PWD) on 5 February 2009 through restricted tender, using the *design and build* method comprising the Design, Construction, Completion, Equipping, Commissioning and Maintenance of Tampin Hospital. Through the design and build method, consultants and contractors were fully responsible on design and project supervision. This project, valued at RM138.39 million, consists of the hospital's main building, nurses' hostel, employee quarters and parking areas. The Ministry of Health Malaysia (MOH) was the project owner. PWD acted as the implementing agency and the Director of Health Work Branch of PWD was the Project Director. The contract between the Government of Malaysia and Fajarbaru was signed on 10 Jun 2009 for a period of 36 months.

The audit of this project found that the project implementation was less than satisfactory with weaknesses, including the overall contractor's performance, because the project was delayed for

¹⁷ Pages 66-69, Auditor General Report 2014 – Government's Financial Statement, Financial Management for the Year 2014 and Activities of the Federal Ministries/Departments and Management of the Government's Companies, Series 3, https://www.audit.gov.my/images/pdf/LKAN2014/Siri3/FEDERAL/synopsis%20auditor%20general%20report%202014.pdf

150 days after the extension of time (EOT) of 344 days (31.4% from the actual date). Consequently, Liquidated and Ascertained Damages (LAD) amounting to RM3.84 million was imposed on the contractor for the delay; the contractor's failure in technical evaluation had affected timely completion of the project; one out of two Operation Theatres could not be used despite the project being handed over to MOH on 3 October 2013 (2 years and 3 months); contract administration was less efficient because of late approval within 28 days and 207 days; the late issuing of Certificate of Non–Completion (CNC) for 173 days from the actual completion date as per the contract; and the late hand–over to MOH after 3 months.

Even though the project was not fully functional as stipulated in the contract, a Certificate of Practical Completion (CPC) was issued. Furthermore, the non-issuance of a Certificate of Partial Occupation (CPO) to the non-functioning and non-completion of two Operation Theatres resulted in Government losses, due the inability to charge LAD against the contractor; there was unsatisfactory work on the quality of construction, as there are several cases of inappropriate design due to the lack of supervision or non-performance of consultants' responsibility; it was observed that PWD as implementing agencies was unable to take into consideration MOH's needs as per Government Requirement. Among other poor quality work were walls that had cracked up to 1,182 points around the hospital complex. Furthermore, an unsuitable water tank design resulted the existence of *Total Coliform Bacteria* in water samples from Block A & Bs' water tanks. Thus, it violated the allowable parameter standards of treated water. Finally, there was also the irregular payment of Facility Engineering Maintenance Services (FEMS) and Biomedical Engineering Maintenance Services (BEMS) for new Tampin Hospital because the services were not provided by Medivest Sdn. Bhd. even though it was still under the contractor's responsibility (AG Report 2015).¹⁸

Case study 8: Upgrading Project of Jalan Klang Lama, Petaling District by Selangor Public Works Department

During the Ninth Malaysian Plan, the State Government has allocated a total of RM47.60 million for the upgrading of Jalan Klang Lama under the provisions for The Upgrading of Road and Bridge in the District of Petaling. The project valued at RM19 million was carried out by direct negotiation. According to the SCALE system, the cost of contract as at August 2010 was RM17.75 million.

The Audit carried out from August to December 2010 revealed that generally, the implementation of the project has achieved the set targets which are to improve road safety and driving comfort, to reduce travel time as well as traffic congestion. However, there were some weaknesses including: the performance of the project was not satisfactory as there was a delay of 23 months; the financial performance of the appointed contractor was not satisfactory as the financial statements recorded losses during the implementation period of the project; the project did not meet the criteria set for projects to be carried out under direct negotiation; the quality of works were not satisfactory such as the installation of U-drain was not properly done, the construction of manhole structures were not in accordance with the construction drawings, the construction of the pedestrian pathways were not in accordance with the specifications and the quality of work was low, the construction of concrete curb inlets was not in accordance with the construction drawings, the locations for the installation of lamp posts were not appropriate and the posts of traffic lights were not strongly installed, guardrails failed to prevent hazard along the roadsides because they were not installed in accordance with the specifications, bus stops were built near

Pages 73-77, Synopsis of Auditor General's Report for the Year 2015, Series 1 on Activities of the Federal Ministries/ Departments and Management of the Government's Companies, http://jan101.audit.gov.my/ebookfiles/357/mobile/index.html#p=38

intersections, the extension works on the drain for the beginning stretch of road were not done properly, manhole covers were lower than the road surface and valve chambers were not covered, waste material was left at the site, and road facilities were not satisfactory because road medians, flyovers and pedestrian pathways were not built (AG Report on Selangor 2010).¹⁹

Case study 9: Infrastructure Construction for EC725 Helicopter at TUDM Air Force Base in Kuantan

The Ministry of Defense purchased 12 EC725 Helicopters for RM1.43 billion. It received the helicopters between December 2012 and May 2014. It had planned to build infrastructure to operationalize, maintain and house these helicopters. The infrastructure project, which included hangar, apron and taxiway, aircraft shelter, building to house the squadron, store house, fire brigade complex, et cetera, was offered based on design and build concept through open tender to Bella Builders Sdn. Bhd. with the price of RM108.89 million. It was scheduled to be completed fully by 31 January 2014. However, as of 8 December 2016, the project failed to be fully completed despite multiple extensions of time given, and Liquidated Ascertained Damages (LAD) were imposed, which accumulated to RM19.61 million. The total cost increased by 16.9% to RM127.29 million.

The audit conducted by the Auditor General's Office found that: the Tender Assessment Committee had recommended a company that did not meet the Need Statement and had weak management of the contract; the construction and installation of equipment was flawed; and the project failed to complete as scheduled. The contract of Bella Builders Sdn. Bhd. was subsequently terminated and a new contractor had to be secured to finish the remaining work of the project (AG Report 2016).²⁰

Case study 10: Management of Integrated Transport Information System Project by Kuala Lumpur City Hall

The Integrated Transport Information System (ITIS) Project was implemented by a consortium company with a cost of RM365.74 million for a period of 32 months (1 August 2002 until 31 March 2005) and another company was appointed as the Project Consultant with a fee totaling RM7.31 million and reimbursement cost of RM0.68 million. The Project Director was the director of the Department of Urban Transportation, Kuala Lumpur City Hall (KLCH). The total cost of this development project was fully borne by the Federal Government. The three fundamental components of the ITIS Project were external equipment, a Traffic Management Centre (TMC) building and system applications. At the same time, KLCH created an ITIS Call Centre at TMC and also provided Early Assistance Services.

Audit findings revealed that the management of the ITIS Project on the whole was unsatisfactory. Among the weaknesses found were the percentage of usability of the external equipment such as CCTV, Automatic Incident Detection and Variable Message Signs costing RM136.65 million was less than 50%. Out only 1,408 of 1,600 (88%) of purchased Automatic Vehicle Location System (costing RM11.37 million) had been utilized, and the utilization was terminated 3 years after the date of supply. The application for lease of land for the construction of the TMC building was

Pages 9-10, Synopsis of the Auditor General's Report 2010 on the Activities of the Selangor State Government Departments/ Agencies and the Management of State Government Companies, https://www.audit.gov.my/docs/BI/44uditor%20General's%20Report/2States/Selangor/1.Sgor_activity.pdf

²⁰ Pages 239-247, Auditor General's Report 2016, Siri 2, https://www.audit.gov.my/index.php/ms/categories-list-lkan-persekutuan/661-laporan-ketua-audit-negara-aktiviti-kerajaan-persekutuan-tahun-2016-siri-2

rejected by the Department of Director General of Land and Mines because the lease was already awarded to Technology Park Malaysia (TPM). As a result, KLCH was compelled to pay RM8.49 million to TPM for the sub-lease with a leasing period of 30 years and lost the rights to the ownership of the TMC building which was worth RM36.87 million. 10 out of 18 computer hardware units at the workstation for the ITIS application operation were damaged. Overall, the achievement of the objectives could not be determined because KLCH has not conducted a costbenefit analysis before and after the development of the ITIS Project (AG Report 2011).²¹

Case study 11: Procurement Management of Majlis Perbandaran Pulau Pinang

In its 2014 report, the Auditor General highlighted some of the weaknesses in the procurement management of the Majlis Perbandaran Pulau Pinang (MPPP), including non-compliance with the rules and regulations, as project performance was less than satisfactory and works were done not in accordance to the intended specifications, quality and conditions.

For example, a contractor that previously had a track record of delays in completing two projects worth RM248,200 by 71 to 88 days was again awarded a new project worth RM147,700. The completion of this new project was also delayed by 73 days. The signing of 15 contracts worth RM12.37 million were delayed for 36 to 387 days. Cracks appeared on the pedestrian paths, toilet ceilings and other places, in the construction of facilities for disabled people at Batu Lanchang market, which cost RM465,891.²²

Case study 12: Procurement Management of Machang District Council and Tumpat District Council

In the audit of the procurement management of Machang District Council (MDM) and Tumpat District Council (MDT) in the state of Kelantan in 2015, the Auditor General found the performance of the two to be satisfactory. However, the Auditor General highlighted two key areas of non-compliance with the existing procurement policy. The first was the procurement of supplies and services exceeding RM20,000 per year was not done through the quotation process. The second was the procurement of construction of one building with a contract value of RM3.29 million was done through direct negotiation, was not properly planned, and not implemented efficiently and effectively (AG Report 2015).²³

²¹ Pages 239-247, Auditor General Report 2016, Siri 2, https://www.audit.gov.my/index.php/ms/categories-list-lkan-persekutuan/661-laporan-ketua-audit-negara-aktiviti-kerajaan-persekutuan-tahun-2016-siri-2.

²² Page 5, Synopsis of Auditor General's Report for the Year 2015, Activities of Departments/Agencies and Management of the State Companies, Kelantan, 2nd Series, https://www.audit.gov.my/images/pdf/2016/LKAN_2015_Siri2/Activity_States/Synopsis%20Kelantan%202nd%20Series.pdf

²³ Pages 17–30, Auditor General Report 2014, Activities of Departments/Agencies and Management of the State Companies, Pulau Pinang, 2nd Series, https://www.audit.gov.my/images/pdf/LKAN2014/Siri2/Negeri/BM/ppinang%20">https://www.audit.gov.my/images/pdf/LKAN2014/Siri2/Negeri/BM/ppinang%20">https://www.audit.gov.my/images/pdf/LKAN2014/Siri2/Negeri/BM/ppinang%20">https://www.audit.gov.my/images/pdf/LKAN2014/Siri2/Negeri/BM/ppinang%20"

Case study 13: Procurement Management of Majlis Daerah Baling and Majlis Daerah Sik

The Auditor General also found the procurement management of Majlis Daerah Baling (MDB) and Majlis Daerah Sik (MDS) in Kedah to be unsatisfactory. In MDB, it was found that 12 work and service procurements worth RM225,594 were made through direct purchase orders instead of quotations, the Certificate of Practical Completion (CPC) for four uncompleted work projects were issue in advance, seven work procurements were fully paid although parts of the jobs worth RM39,870 had failed to be accomplished according to job specifications and the procurement of communication equipment worth RM108,000 had been above the authorized limit of the officer, were disposed and awarded as gift not within the acceptable time frame and without the State Financial Officer's consent. In the case of MDS, it was found that four work and supply procurements amounting to RM343,082 were paid in advance before the ordered jobs were fully completed and the increase in cost of office renovations at MDS that exceeding 50% was not referred to the State Financial Officer (SFO) (AG Report on Kedah 2015).²⁴

Case study 14: Procurement Management of Tenom District Council, Nabawan District Council and Tambunan District Council

The procurement management of two local governments in Sabah, Tenom District Council (TnmDC), Nabawan District Council (NDC) and Tambunan District Council (TbnDC) was found to be less satisfactory as a total of 32 procurements worth RM201,295 which utilized council funds in TnmDC and NDC did not comply with the allowable limit of procurement. A respective total of 6 and 22 transactions which utilized council funds in TnmDc and NDC valued at RM21,491 and RM150,037 respectively were procured via direct purchase instead of quotation/tender.²⁵

These are just some selected cases from the many cases highlighted in the annual reports of the Auditor General. It is believed that there still are many unreported cases and what has been reported by the Auditor General may just represent the tip of the iceberg.

²⁴ Pages 7-8, Synopsis of Auditor General's Report for the Year 2015, Activities of Departments/Agencies and Management of the State Companies, Kedah, 2nd Series, https://www.audit.gov.my/images/pdf/2016/LKAN_2015_Siri2/Activity_States/Synopsis%20Kedah%202nd%20Series.pdf

²⁵ Pages 10-11, Synopsis of Auditor General's Report for the Year 2015, Activities of Departments/Agencies and Management of the State Companies, Sabah, 2nd Series, https://www.audit.gov.my/images/pdf/2016/LKAN_2015_Siri2/Activity_States/Synopsis%20Sabah%202nd%20Series.pdf

4 Key Weaknesses of the Procurement Regime

From the cases above and many other cases highlighted by the Auditor General in its reports and those exposed by media, the key weaknesses of the existing design and implementation of the procurement system of Malaysia can be divided into two parts, namely the weaknesses in internal control system and the weaknesses in external oversight mechanism.

4.1. WEAKNESSES IN INTERNAL CONTROL SYSTEMS

4.1.1 Lack of adequate needs assessment and market analysis

In any procurement, the need to procure goods or services or works must be identified and assessed properly before making plans of procurement. The procurement policy of Malaysia requires all government agencies to conduct a market survey and procurement sourcing to ensure product availability and to estimate a reasonable price. Trends of pricing in the past can be used as a guidance. However, what is sorely lacking in the Treasury Circular 2 is that the needs assessment should be conducted before deciding on procurement.²⁶

Procurement should not be made merely because there is a budget to be spent or because it is easily exploited to siphon money out through the creation of projects which are neither needed nor beneficial. For example, Lembaga Tabung Haji Berhad spent RM3.87 million on 566 unoccupied beds for Haji pilgrims in 2015.²⁷ Similarly, the Malaysian Immigration Department was found to have spent RM10.3 million on biometric systems and equipment in its implementation of the Malaysian Immigration System (myIMMs) which many ended up unused.²⁸ It is also highly questionable if 12 mega-dams are needed in Sarawak under the Sarawak Corridor of Renewable Energy (SCORE) by 2020 when the 1200 MW-capacity Bakun Dam is currently operating at 3 4 of its capacity, generating 900MW of electricity.²⁹

²⁶ See Article 1(i)(c)(ii), Malaysia Treasury Circular PK 2, http://ipp.treasury.gov.my/

²⁷ "AG Says Government "Excellent" Despite Wasting Billions Of Ringgit", Says.com, 19 May 2016, http://says.com/my/news/ag-report-government-wasted-billions-of-ringgit-due-to-poor-finance-management

²⁸ Pages 87–89, Auditor General's Report 2015, Government's Financial Statement, Financial Management for the Year 2015 and Activities of the Federal Ministries/Departments and the Management of Government Companies, Series 1, https://www.audit.gov.my/images/pdf/2016/LKAN_2015_Siri1/FEDERAL/5%20-%20synopsis%20agr2015%20series%201.pdf

²⁹ "Bakun Turbines Running At Just 50% Capacity", *Sarawak Report*, 30 January 2014, http://www.sarawakreport.org/2014/01/bakun-turbines-running-at-just-50-capacity-exclusive/

In the case of the East Coast Rail Link (ECRL) project, the cost and benefits analysis of the project is very much in question. Member of Parliament Tony Pua highlighted that the feasibility study by the government-appointed engineering consultants, HSSI, estimated in December 2015 that the project's value would be RM29 billion (RM53.2 million per km), whereas CCCC was awarded the contract at RM55 billion (RM91.7 million per km).³⁰ Pua revealed that 85 percent of the project will be financed by China's Export-Import Bank (Exim), with a soft loan carrying an interest rate of 3.25 percent per annum repaid over 20 years with a 7-year moratorium. This would incur an annual repayment of ECRL borrowings of an estimated whopping RM3.7 billion and even if the ECRL is to "break even from the operational aspect" after eight years, it will still be suffering cash flow losses of some RM3.7 billion annually due to the interest payments. Economist KS Jomo also questioned the unrealistic revenue projection of ECRL project when it is expecting to carry 60 million tonnes of freight yearly by 2032 even though KTM's existing freight haulage is only six million tonnes across the entirety of its existing rail network from Padang Besar to Johor Bahru.³¹

Clearly, the official decision on the ECRL project is not based on an adequate needs assessment, sound cost and benefit analysis and market survey.

Immediate steps to be taken:

- · Conduct consultation with stakeholders on what is needed.
- Appoint experts as advisers when necessary to help ensure projects are on sound footing.
- All needs assessment, market survey and cost and benefit analysis should be recorded and made readily available for internal and external audit.

4.1.2 Poor Procurement Planning and Development of Specification

The procurement policy of Malaysia requires all government agencies to present an annual list of procurements to the head of agency in December every year. The list should include all procurements according to goods, services and works, its budget allocation, estimated date of procurement announcement and estimated date for presentation to the procurement board of the agency for decision.³² However, the method of procurement is currently not required in the annual plan under the Treasury Circular PK 2. This allows for possible abuse of direct purchase instead of open tender.

It is also the obligation of the agency to ensure that the estimated budget allocation for procurement has been approved and is sufficient to cover all planned procurement. It also requires the agency to establish a Specifications Committee to prepare specifications for every procurement to be made by the agency.³³

The objectives and benefits of such yearly procurement plans is clearly stated in the circular of the Treasury of Malaysia. Amongst other reasons, it is to enhance the transparency of public procurement, to serve as a mechanism to monitor procurement activities to prevent delays, malpractices and abuse of power, and to give enough notice for suppliers and contractors to make preparation.³⁴ Annual planning will also allow ample time for procuring agency to draft detailed

³⁰ Rais Hussin, "ECRL-In China's debt we trust", Malaysiakini, 21 December 2017, https://www.malaysiakini.com/news/406150

³¹ Tony Pua, "Show math to back ECRL's wildly ambitious projections", Malaysiakini, 30 November 2017, https://www.malaysiakini.com/news/403833

³² See Article 1(i), Malaysia Treasury Circular Pk 2.

³³ See Article 1(iv), Malaysia Treasury Circular Pk 2.

³⁴ See Article 4(i), Malaysia Treasury's Circular PK 1, http://lpp.treasury.gov.my/

specifications and designs of procurement, to seek availability in the market, to conduct price survey and to prepare the estimation of price for the procurement.

However, the Auditor General in his 2011 report indicated that there is a lack of meticulous planning on projects/activities and in determining the scope and specifications of tenders.³⁵ He again highlighted in the 2012 report that "programmes/projects and scopes/specifications are not planned and identified properly".³⁶

For instance, in the case of the Kuantan New Court Complex, it was found that the construction design of the Complex was not suitable or practical. The cost of the Complex increased by RM19.56 million due to the poor planning in design and scope of works (see case study 5). In the case of shoes purchased by the Royal Customs Department, 7,659 pairs of new shoes worth RM602,089 were disposed because they did not meet the specifications and were deemed unsuitable to be used (see **case study 4**).

Malaysian Rubber Board (MRB) allocated RM32.7 million for the Development of Advanced Materials and Value-Added Products for the period of 2006–2013. Due to poor procurement planning, it was found that the equipment purchased by MRB had not been utilized for various reasons, including a delay in the completion of the latex processing factory, the need for research has not arisen and machine components to produce a product had not been bought.³⁷ In another mind-boggling case of constructing new sewerage plants, the Sewerage Services Department (SSD) was found by the Auditor General to have identified premises for new sewerage plants in Langkawi and Port Dickson that were not completely connected to the public sewerage network. SSD was also advised by the Auditor General to take into accounts the cost of connecting users' premises to the public sewer pipes in the new sewerage network project so that sewerage system could operate as a whole.³⁸

The implications of problems of inadequate planning of procurement and poor drafting of specifications are great. It is not only that taxpayers' money is wasted, it hampers the delivery of good and much-needed infrastructure and government services to the public.

Immediate steps to be taken:

- In the annual procurement plan of all government agencies, the method of procurement should be stated clearly for all procurement items. The Treasury Circular TK2 should be amended in line with this requirement.
- Output or outcome-based specifications should be used.
- Appoint experts as advisers when necessary to help in developing specifications.

³⁵ Page VIII, Auditor General's Report 2011 on the Audit of Financial Management and Activities of Federal Statutory Bodies and Management of Subsidiary Companies, https://www.audit.gov.my/docs/BI/LKAN2011/FSB/AUDITOR%20GENERAL%27S%20REPORT%202011%20">https://www.audit.gov.my/docs/BI/LKAN2011/FSB/AUDITOR%20GENERAL%27S%20REPORT%202011%20">https://www.audit.gov.my/docs/BI/LKAN2011/FSB/AUDITOR%20GENERAL%27S%20REPORT%202011%20">https://www.audit.gov.my/docs/BI/LKAN2011/FSB/AUDITOR%20GENERAL%27S%20REPORT%202011%20">https://www.audit.gov.my/docs/BI/LKAN2011/FSB/AUDITOR%20GENERAL%27S%20REPORT%202011%20">https://www.audit.gov.my/docs/BI/LKAN2011/FSB/AUDITOR%20GENERAL%27S%20REPORT%202011%20">https://www.audit.gov.my/docs/BI/LKAN2011/FSB/AUDITOR%20GENERAL%27S%20REPORT%202011%20">https://www.audit.gov.my/docs/BI/LKAN2011/FSB/AUDITOR%20GENERAL%27S%20REPORT%202011%20">https://www.audit.gov.my/docs/BI/LKAN2011/FSB/AUDITOR%20GENERAL%27S%20REPORT%202011%20"

³⁶ See page XIII, Auditor General Report 2012 - Activities of the Federal Ministries/Departments and the Management of Government Companies, Series 1, https://www.audit.gov.my/images/pdf/LKAN2012/Persekutuan/Siri1/synopsis%20lkan2012%20siri%201%20-%20website.pdf

³⁷ Page 6, Ibid.

³⁸ Pages 29-30, Auditor General Report 2012 - Activities of the Federal Ministries/Departments and the Management of Government Companies, Series 2, https://www.audit.gov.my/images/pdf/LKAN2012/Persekutuan/Siri2/synopsis%20lkan2012%20siri%202%20-%20a5.pdf

4.1.3 Failures in observing the rules on procurement procedure

Threshold for quotation method is too high and the problems of contract splitting

Currently, the method of quotation can be used for public procurement of goods, services and works in Malaysia that is not exceeding RM500,000. This threshold is relatively high in comparison with many other countries. For instance in Singapore, the threshold for quotation is limited to the value between SGD\$3,000-\$70,000 (RM21,000-210,000). All procurement above SGD\$70,000 is subjected to open tender.³⁹

Furthermore, there is inconsistency in the treasury circulars on the threshold for tender. Treasury Circular PK 2 sets the threshold for tender for goods, services and works at RM500,000.⁴⁰ However, Treasury Circular PK 2.1 also sets the threshold for the same at RM200,000.⁴¹ Such inconsistency should be avoided to prevent abuse of the policy.

There also have been cases of splitting contracts into separate lots to fit below the threshold set by the procurement policy for the purpose of avoiding quotation or tender procedures, although such practice is clearly prohibited under the Treasury Circular PK2 with some exceptions.⁴²

For instance, in the case of University Malaysia Sabah, the Auditor General Report 2015 found that the university authority split a procurement amounting to RM210,297 into smaller amounts, to use the method of direct purchase instead of call for quotations.⁴³ It was found that the purchase price difference for A4 paper and toner of the same type between 2013 and 2015 ranged from 7.1% to 379.6%.⁴⁴

The Auditor General found that procurement of supplies and services exceeding RM20,000 was not done through the quotation process in Machang District Council and Tumpat District Council (See case study 12). It was found that 12 work and service procurements worth RM225,594 were made through direct purchase instead of quotations by the Baling District Council (See **case study 13**). Similarly, a total of 6 and 22 procurements worth at RM21,491 and RM150,037 were procured via direct purchase instead of quotation/tender by Tenom District Council and Nabawan District Council (See **case study 14**).

Abuse of Non-Competitive Procedures

Despite the procurement rules of Malaysia clearly stipulating that the method of open tender should be used for the procurement of any goods, services and works that is more than RM500,000, it is shocking that there are many cases where the procurement agency has failed to observe and comply with this important regulation. When the competitive method of open tender is not employed, it opens up opportunities for actors to bypass objective criteria for assessment and the selection of vendors, thus facilitating cronyism, nepotism and corruption. This may lead to non-competent vendors/contractors being awarded the project with implications of poor quality in deliverables, uncontrolled increase in cost, delays in completion of projects, and et cetera.

An example is the appointment of Sunshine Fleet Sdn. Bhd. (SFSB) by the Ministry of Health through direct negotiation instead of an open tender to build the Shah Alam Hospital.

³⁹ Overview of Government Contracts and Tenders, *SME Portal Singapore*, accessed 20 August 2018, https://www.smeportal.sg/content/smeportal/en/opportunities/government-contracts-tenders.html

⁴⁰ Page 28, Malaysia Treasury's Circular PK 2.

⁴¹ Pages 2-6, Garis Panduan Penilaian Tender, PK 2 Lampiran 2.21.

⁴² See Article 1(iii)(a) and Article 7(a)(i), Malaysia Treasury's Circular PK 2.

^{43 &}quot;AG Says Government "Excellent" Despite Wasting Billions Of Ringgit", Says.com, 19 May 2016, http://says.com/my/news/ag-report-government-wasted-billions-of-ringgit-due-to-poor-finance-management

⁴⁴ Page 60, Auditor General's Report for the Year 2015, https://www.audit.gov.my/images/pdf/2016/LKAN_2015_Siri1/BBP/
<a href="https://www.audit.gov.my/images/pdf/2016/LKA

The project incurred a loss of RM68.53 million after SFSB failed to carry out construction of the hospital, which was to have a capacity of 300 beds. The project was transferred to Gadang Engineering (M) Sdn. Bhd. in 2011 with a new contract price worth RM410.87 million.⁴⁵ Similarly, the Kuching New Prison Project that cost RM165 million, was initially awarded to WMM Holdings Sdn. Bhd. through direct negotiation and not an open tender (See **case study 1**). However, due to the failure of WMM Holdings Sdn. Bhd. to complete the project within the stipulated contract period (in addition to an approved extension of time), the project was later awarded to TSR Bina Sdn. Bhd. through an open tender in 2005 to complete the abandoned project. As a result, the actual total cost of the project increased to RM221.11 million.⁴⁶

The procurement of biometric systems and equipment with a total value of RM29.9 million by the Malaysian Immigration Department was awarded to HeiTech Padu Berhad in late 2010 without open tender. Many of these biometric systems and equipment ended up unused by the Immigration Department, raising the pertinent question of whether this is another project to siphon out public money.⁴⁷

In the project of building living quarters for married personnel of the Ministry of Defense involving 38 projects and cost of RM3.21 billion (See case study 2), the Auditor General audited 12 projects and found that only one project was awarded through an open tender. The rest were either by direct negotiation, limited tender or obtaining quotations. Among the 12 audited projects, six were awarded to Syarikat USL, a joint venture by the Finance Ministry-owned Syarikat Perumahan Negara Bhd. and the Armed Forces Fund Board Sdn. Bhd., which was found by the Auditor General as "inexperienced" and "technically incompetent" to complete the projects.⁴⁸

In the case of procurement of hospital information system maintenance by the Ministry of Health in which exorbitant price were charged for printers, system and staff, the Auditor General found that out of 12 hospitals involved, a single company—Systematic Conglomerate Sdn. Bhd.
—received directly-negotiated contracts to work on five hospitals while contracts for the other seven hospitals were awarded through open tender (See case study 3). The Auditor General found a shocking price difference of RM15 million between the contracts awarded through direct negotiation and open tender.⁴⁹

Other cases that involved the abuse of direct negotiation include the case of Kuching New Prison Project that cost RM165 million (Case study 1), or the construction of Sultanah Nora Ismail Hospital that cost RM200 million (Case study 6), or the upgrading project of Jalan Klang Lama that cost RM19 million (Case study 8).

As illustrated in these many cases, the method of direct negotiation was preferred instead of open tender by the procuring agency. However, direct negotiation should be considered only and when necessary in which open tender could be exempted. It should mainly be due to urgent purchase and when there is only one supplier, thus no price and specification comparison could be made.

⁴⁵ Pages 83–84, Auditor General's Report – Government's Financial Statement, Financial Management for the Year 2013 and Activities of the Federal Ministries/Departments and Management of Government Companies, Series 3, https://www.audit.gov.my/images/pdf/LKAN2013/Persekutuan/Siri3/SYNOPSIS%20Laporan%20Aktiviti%20Persekutuan%20Siri%203%202013%20Eng.pdf

⁴⁶ Pages 55-57, Synopsis – Auditor General's Report for the Year 2010 on the Audit of the Federal Government's Financial Statement, Financial Management and Activities of the Federal Ministries/Departments and the Management of Government Companies, https://www.audit.gov.my/images/pdf/LaporanKAN2011/AGR%20federal%202010%20Synopsis.pdf

⁴⁷ Pages 87–89, Auditor General's Report 2015, Government's Financial Statement, Financial Management for the Year 2015 and Activities of the Federal Ministries/Departments and the Management of Government Companies, Series 1, https://www.audit.gov.my/images/pdf/2016/LKAN_2015_Siri1/FEDERAL/5%20-%20synopsis%20agr2015%20series%201.pdf

⁴⁸ Aidila Razak, "Defence Ministry pays RM3.2bil for shoddy quarters", Malaysiakini, 15 October 2012, https://www.malaysiakini.com/news/211730

⁴⁹ Page 67, Synopsis of Auditor General's Report for the Year 2011 on the Audit of the Federal Government's Financial Statement, Financial Management and Activities of the Federal Ministries/Departments and the Management of Government Companies, https://www.audit.gov.my/docs/BI/LKAN2011/Federal/LKAN%202011%20-%20Synopsis%20(ENGLISH).pdf

In principle, the appointed contractor must be an expert, well-known for its credibility, have prior relevant experience, proper planning, good pricing terms, and most importantly, be the only supplier or contractor in the country for the item to be purchased.⁵⁰ Clearly, the many cases discussed in this paper do not meet these criteria and the method of direct negotiation has been abused repeatedly.

Why have the procurement boards of these projects failed to stop the abuse of direct negotiation which are clearly in violation of procurement thresholds and policies? Is it not the responsibility of the procurement board to consider and agree on acceptance of tender based on the principles, policy and the rules of government, as stated in Treasury Circular PK 2?⁵¹

It must be pointed that in many of these cases, the Ministry of Finance, who formulated the procurement rules and system, also failed to abide by the very rules of open tender that it sets for all. It approved the award of the procurement of biometric systems and equipment to HeiTech Padu Berhad by the Malaysian Immigration Department.⁵² Similarly, it also approved the award of the project of building living quarters for military personnel to Syarikat USL, although the award was done through direct negotiation by the Ministry of Defense. In the case of the award of hospital information system project to Systematic Conglomerate Sdn. Bhd., the Ministry of Health claimed that the direct negotiation of this project was done by the Ministry of Finance even though it should have been done through an open tender.⁵³

All agencies that receives budget allocation from the federal government have the obligation to follow financial rules and regulations set by the Treasury.⁵⁴ However, it would be impossible to ensure the enforcement of open tender requirements of the procurement system by other federal ministries and agencies, state governments and local governments when the Ministry of Finance, who sets the rules, failed to follow its own rules.

Immediate steps to be taken:

- The Ministry of Finance must lead by example by following strictly its own rules and regulations on open tender.
- Review annual procurement plan of all government agencies and ensure method of procurement is stated in all projects and the compliance with the requirements for open tender.
- Establish an independent internal audit unit on the compliance of procurement policy.

4.1.4 Non-Transparency and Decentralization of Notices of Public Procurement

When there is transparency in public procurement processes, there is less likelihood for corruption or non-compliance with the procurement policy to occur, as participating vendors would be able to ensure that their bids are being treated equally and reviewed fairly, while public members can also monitor the management of public procurement by the government agencies.

For transparency to work, making procurement information available as much as possible and as public as possible is key. Since the e-procurement system in Malaysia has been implemented since 2002, there has been some progress made in terms of transparency in public procurement.

⁵⁰ See Radiah Othman, 'Procurement Issues in Malaysia', *International Journal of Public Sector Management*, August 2011, page 570, https://www.researchgate.net/publication/238599400 Procurement issues in Malaysia

⁵¹ Page 61, Malaysian Treasury Circular PK 2.

⁵² "AG Says Government "Excellent" Despite Wasting Billions Of Ringgit", Says.com, 19 May 2016, http://says.com/my/news/ag-report-government-wasted-billions-of-ringgit-due-to-poor-finance-management

⁵³ 'Printer maintenance is 72 times purchase price', Malaysiakini, 17 October 2012, https://www.malaysiakini.com/news/211826_

 $^{^{54}}$ Article 8(i), Malaysia Treasury Circular PK 1.

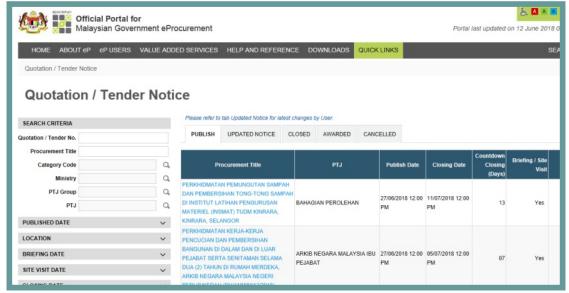


Illustration 1: Website of e-Perolehan



Illustration 2: Website of MYPROCUREMENT



Illustration 3: Website of Ministry of Education

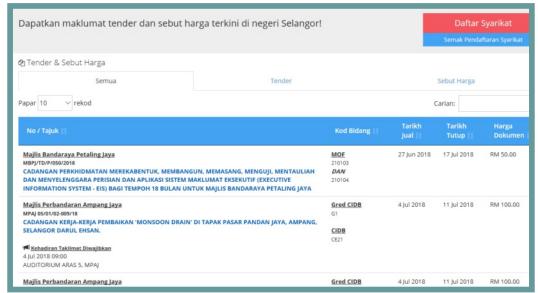


Illustration 4: Procurement portal of Selangor State Government

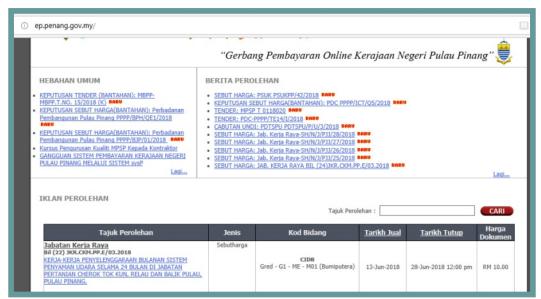


Illustration 5: Procurement portal of Penang State Government



Illustration 6: Procurement section of Treasury of Pahang State Government

Currently, the Federal Government publishes notices of public procurement on procurement portals such as e-Perolehan (Illustration 1) or MYPROCUREMENT (Illustration 2).⁵⁵ At the same time, different ministries and federal government agencies have their own procurement section in their respective websites, as in the case of Ministry of Education (Illustration 3) for example. It is rather confusing for vendors to decide which portal to follow if they would like to bid for government projects.

However, among the 13 states, only the state-level procurement portals of Selangor and Penang State Government are fully functioning.⁵⁶ There are no similar portals hosted by the state government of Perlis, Perak, Negeri Sembilan, Melaka, Kelantan, Terengganu and Sabah. Meanwhile, the state public procurement portals of Kedah, Pahang (Illustration 6) and Sarawak are either empty or only contain scant information in them.⁵⁷

Consequently, it is very difficult for suppliers/vendors and public members to get information about notices of public procurement issued by the 11 state governments, let alone the specification of projects, award criteria, *et cetera*. This may lead to abuse of non-competitive procurement methods for procurement of goods, service,s and works, in among the method of direct purchase/quotation/closed tender system.

Immediate steps to be taken:

- Following the examples of the Selangor and Penang state governments, all other state governments should construct a separate and dedicated portal to provide information on public procurement. This includes notices of request for quotation or tender and their related documents, and the final decisions of all public procurement.
- To establish a one-stop public procurement portal for all federal government ministries and agencies.

4.1.5 Opaque Evaluation and Decision-Making Processes

Treasury Circular Letter PK 2 outlines the processes and criteria in conducting the evaluation of quotations and tenders.

Direct Purchase

For procurement of goods and services below RM20,000 using the method of direct purchase, the head of agency/controlling officer/authorized officer should evaluate bids based on a market price survey and choose an offered price that is most beneficial to the government.⁵⁸

Direct Appointment

The method of direct appointment can only be used for procurement of works that is less than RM20,000. Direct appointment can be made from amongst Grade G1 contractors that are registered with CIDB with Certificate for Procurement of Public Works (Sijil Perolehan Kerja

⁵⁵ E-perolehan (https://www.eperolehan.gov.my/), MYPROCUREMENT (https://myprocurement.treasury.gov.my), NeTI and e-Perunding (https://eperunding.treasury.gov.my/v41/).

⁵⁶ Selangor Online Tender System 2.0 is at https://tender.selangor.my/?mid=674; Government procurement portal of Penang is at https://www.penang.gov.my/en/tender-dan-sebut-harga.

⁵⁷ Government procurement portal of Kedah can be found at http://ppnk.kedah.gov.my/ms/Page?
type=zByNOuF9FYw=&pid=VIORsO8+BEFPNoYkW6Bb/A==; government procurement portal of Pahang is at http://pkn.pahang.gov.my/index.php/tender-sebutharga; and, government procurement portal of Sarawak is at http://www.treasury.sarawak.gov.my/pages.php?mod=announcement&sub=announcement_detail&id=5

⁵⁸ Page 12, Malaysia Treasury Circular PK 2.

Type of		DIRECT PURCHASE	
Procurement	Amount	Selection Criteria	Approval
Goods and Services	Below RM20,000	Market survey by getting at least three quotations for comparison.	Controlling officer/head of agency/authorised officer

Type of		DIRECT APPOINTMENT	
Procurement	Amount	Selection Criteria	Approval
Goods and Services	Below RM20,000	Grade G1 contractor registered with CIDB with SPKK and Bumiputera certificate.	Not available

Table 3 & 4: Summary of Procurement Processes for Direct Purchase and Direct Appointment methods

Kerajaan, SPKK) and Bumiputera Status Certificate (Sijil Taraf Bumiputera, STB). The Treasury Circular does not state the party to approve such direct appointment.

Quotation

For procurement of goods and services that is between RM20,000 to RM500,000 through the method of quotation, two evaluation committees will be established. The technical evaluation committee is required to evaluate quotations based on specifications in the procurement documents, documents presented by bidders, statement of compliance and/or physical evaluation. Meanwhile, the price evaluation committee should conduct its evaluation by taking into consideration of various factors such as payment terms, rates of payment, schedules, discounts, the market price, and the capacity of bidders. They are also required to make comparison of quotations on equal footing, and the evaluation of procurement of assets such as vehicles, machinery, information system, et cetera, should be based on the total cost of the bid.⁵⁹

For procurement of works that is between RM20,000 to RM500,000 via calling for quotations, only one evaluation committee will be established. The evaluation committee is required to conduct evaluations of the fulfillment of all conditions stated in procurement documents by bidders, capacity/expertise of bidders such as past work experience, the performance of current works at hand, completion/delivery date and the financial capacity of bidders, which includes having a minimum capital of 1.5% of the agency's estimated price in the form of liquidated assets for the works value between RM200,000 to RM500,000.⁶⁰

A quotation committee comprising of at least three members appointed by Head of Agency/Controlling Officer will decide the winner based on the most beneficial bid for the government and ensure that all bids are treated with equal opportunity. The committee needs to make the decision in a meeting and the decision has to be unanimous. If there is no unanimous decision, the matter will be referred to the agency's procurement board for final decision.⁶¹ (see Table 5 and Table 6.).

⁵⁹ Pages 22-24, Malaysia Treasury Circular PK 2.

⁶⁰ Pages 24-25, Malaysia Treasury Circular PK 2.

⁶¹ Page 27, Malaysia Treasury Circular PK 2.

	Approval	Not available I	Quotation Committee comprising not less than three members appointed by the Head of Agency/Controlling Officer with one of the members from the management or professional group.	Quotation Committee comprising not less than three members appointed by the Head of Agency/Controlling Officer with one of the members from the management or professional group.
JD SERVICES	Evaluation	Evaluation Committee comprising of not less than three members appointed by the Head of Agency.	Technical Evaluation Committee comprising not less than three members. Price Evaluation Committee comprising not less than two members.	Technical Evaluation Committee comprising not less than three members. Price Evaluation Committee comprising not less than two members.
QUOTATION FOR GOODS AND SERVICES	Selection Criteria	Invitation of at least three quotations for comparison.	Market survey by inviting at least five quotations from suppliers with Bumiputera status. Technical Evaluation Committee will evaluate based on specifications stated in procurement documents, documents presented by bidders, statement of compliance and physical evaluation. Price Evaluation Committee will evaluate based on payment terms, payment rates, period, discounts, open market price, and capacity of bidder on equal footing.	Market survey by inviting at least five quotations. Suppliers with Bumiputera status are given preference in term of price. Technical Evaluation Committee will evaluate based on specifications stated in procurement documents, documents presented by bidders, statement of compliance and physical evaluation. Price Evaluation Committee will evaluate based on payment terms, payment rates, period, discounts, open market price, capacity of bidder on equal footing.
	Amount	RM20,000 to RM50,000	RM100,000 to	RM100,000 – RM500,000

Table 5: Summary of Procurement Processes for Goods and Services through Quotation method

Tender

As for the procurement of goods, services and works using the method of open tender, there will be two committees which are similar to the quotation process, to conduct the evaluation of all tender submissions. For works that are not based on Turnkey or Build and Design, there will be only one committee of evaluation established. The basis for tender evaluation include fulfillment of conditions set out in the tender documents, technical capacity of bidders such as professional and technical staff, works experiences, performance record, projects currently managed by bidders, plants (rented or self-owned), financial capacity such as turnover capital, net worth, credit facility, delivery date, financial reports of past three years for contractor of Grade G7 and other documents such as current work contracts, performance monitoring reports of current works and project engineer's report on work performance. 62For procurement of goods and services through tender, the final approval lies with the Tender Boards, A and B. Tender Board A (for procurements valued at more than RM20 million) comprises the chief secretary of the respective ministry or the deputy as chairperson, a representative of the chief secretary of the Treasury, and the Director General of Public Works Department or their representative. Tender Board B (for procurement valued below RM20 million) comprises the chief secretary of the respective ministry or their deputy as chairperson, a division secretary or head, and an officer from the ministry or other departments that can contribute in terms of knowledge and experience in relation to the goods or services procured.

Similarly, for procurement of works, the approval will be decided by Tender Board A (for procurements valued at more than RM20 million) and Tender Board B (for procurements valued below RM20 million). Tender Board A comprises Director–General of Public Works Department or the deputy as chairperson, representative of chief secretary of Treasury and a representative of chief secretary of Public Works Department. Tender Board B comprises the Director–General of Public Works Department or the deputy as chairperson, a representative of chief secretary of Public Works Department, and an officer from the ministry or other departments that can contribute in terms of knowledge and experience in relation to the goods or services procured.

Tender boards are required to ensure that there is sufficient budget allocation before a procurement is made, to ensure all important information has been included in the tender advertisement, to check the number of bidders and price offered, to ensure that the same officials do not both sit on tender evaluation committees and tender opening committees, to ensure that the validity period of tenders are correct before making a decision, and to ensure the level of bidders corresponds to the category of tender.⁶³

These rules of evaluation of quotations and tenders are quite comprehensive. However, it is difficult to assess to what extent these rules have been followed by public procurement officials to ensure that the right bidder is chosen due to the non-disclosure of the full results of the evaluation committees, quotation committees and tender boards in all public procurements, in addition to the absence of independent comprehensive research on it.

Nevertheless, bad decisions of public procurement make the news every year when the Auditor General publishes its annual report. In the case of building living quarters for military personnel by the Ministry of Defense, the project built 46,880 units of Married Quarters of various classes as at December 2011. However, audit findings revealed that the overall construction performance of 12 Married Quarters projects were unsatisfactory. Among the weaknesses found were contractors failed to complete construction within the initial contract period and were given extension of time from 94 to 1,240 days; completed Married Quarters projects comprised a number of construction

⁶² Page 49-54, Malaysia Treasury Circular PK 2.

⁶³ Page 65, Malaysia Treasury Circular PK 2.

	QUOTATION FOR WORKS		
Amount	Selection Criteria	Evaluation	Approval
RM20,000 to	Market survey by inviting at least five quotations from Grade G1 contractors registered with CIDB and with SPKK certification. Evaluation Committee will evaluate based on fulfillment of all conditions stated in procurement documents by bidders, capacity/expertise of bidders such as past works experiences, performance of current works at hand, completion/delivery date and financial capacity.	Evaluation Committee with not less than three members with one of the members being a technical officer.	Quotation Committee comprising not less than three members appointed by Head of Agency/Controlling Officer, with one of the members being a technical officer.
RM50,000 to	Market survey by inviting at least five quotations from Grade G2 contractors registered with CIDB and with SPKK certification Evaluation Committee will evaluate based on fulfillment of all conditions stated in procurement documents by bidders, capacity/expertise of bidders such as past works experiences, performance of current works at hand, completion/delivery date and financial capacity of bidders that includes having a minimum capital of 1.5% of agency's estimated price in the form of liquidated assets.	Evaluation Committee comprising not less than three members with one of the members being a technical officer.	Quotation Committee comprising not less than three members appointed by Head of Agency/Controlling Officer, with one of the members being a technical officer.

Table 6: Summary of Procurement Processes for Works through Quotation method

defects and damages and contractors failed to rectify all defects/damages within the stipulated period; this eventuated in an increase in project cost of RM174.43 million to a total of RM1,297.18 million (a 15.5% increase), compared to an initial project cost of RM1,122.75 million (AG Report 2011).⁶⁴ It was also reported that 2,085 complaints of damage were made for the projects, including ceiling boards which had rotted through due to leaks in the roof and "bad stench" due to leaks of the sewerage system (**Case study 2**).

In the case of the construction of Tampin Hospital by Public Works Department, contractor Fajarbaru Builders Sdn. Bhd. (Fajarbaru) was appointed in 2009 through restricted tender using the design and build method, whose contract was valued at RM138.39 million. Ministry of Health Malaysia (MOH) was the project owner. PWD acted as implementing agency and the Director of Health Work Branch and PWD was the Project Director. The audit of this project found that the contractor's performance was less than satisfactory because the project was delayed for another 150 days after the extension of time (EOT) of 344 days (31.4% from the actual date). Consequently, Liquidated and Ascertained Damages (LAD), which amounted to RM3.84 million, was imposed to the contractor for the delay; the contractor's failure in technical evaluation had affected timely completion of the project; one of two Operation Theatres builts could not be used despite the project was handed over to MOH on 3 October 2013 (2 years and 3 months); the contract administration was less efficient because of late approval within 28 days and 207 days; the late issuing of Certificate of Non Completion (CNC) for 173 days from the actual completion date as per contract; and the late handover to MOH for three months. Amongst the poor quality of work were constructed walls around the hospital complex which had up to to 1,182 points of cracking. Furthermore, an unsuitable water tank design resulted the existence of Total Coliform Bacteria in water sample from Block A & B's water tank in violation of the allowable parameter standards of treated water (Case study 7).

In the Auditor General's report of 2014, the Penang City Council was found to have awarded a new project valued at RM147,700 to a contractor that had delayed on completing two projects worth RM248,200 by 71 to 88 days. The completion of the new project was again delayed by 73 days (case study 10).

These cases raise serious questions on the effective roles of the technical evaluation committee, the price evaluation technical committee, the quotation committee, and the tender boards and their observation of the procurement policy and rules and regulations.

While notices of public procurement are published by some of the federal ministries, state governments and local governments, the decision-making processes of all government agencies continue to be shrouded in secrecy. In many cases, it is unknown to the bidders and the public how many vendors submitted their bid for a public procurement, who the bidders are, what are their scores. what bases are projects/contracts awarded on, and what grounds of rejection are for unsuccessful bidders.

Immediate steps to be taken:

- The party that is responsible for the approval of direct appointment for procurement of works valued at less than RM20,000 should be stated clearly in the Treasury Circular 2 for accountability.
- · Vendors/Contractors with a poor track record should be blacklisted.

⁶⁴ Page 72-73, Synopsis of Auditor General's Report for the Year 2011 on the Audit of the Federal Government's Financial Statement, Financial Management and Activities of the Federal Ministries/Departments and the Management of Government Companies, https://www.audit.gov.my/docs/BI/LKAN2011/Federal/LKAN%202011%20-%20Synopsis%20(ENGLISH).pdf

Table 7: Summary of Procurement Processes through the Tender method

4.1.6 Disclosure of Contract Award

reasury Circular Letter PK 2 requires the procurement agency to publish the final decision of the Agency's Quotation Committee/Procurement Board on the notice board/web portal of the agency. It should include the name of the successful bidder, its offered price, and their completion/delivery period.⁶⁵

While the public procurement portal of the federal government publishes notices of public procurement only, the public procurement portal of Selangor and Penang state government take a step further in announcing also the bills of quantity, specifications and design of purchase/projects when publishing notices of procurement. For purchase/projects whereby a decision has been made, the procurement portal of the federal government publishes the name of the successful bidder, whereas the portal of Selangor and Penang state government publish the name of the company that won the bid along with the offered price.

However, even in the case of the state of Selangor and Penang, both do not publish the final bill of quantity, specification and design offered by the company that won the purchase/procurement. Hence, it is difficult for public members to assess the award of the purchase/project and monitor implementation of the purchase/project.

Immediate steps to be taken:

- Federal government procurement portal MYPROCUREMENT and all state government procurement portals should publish bills of quantity, specifications and design of purchase/projects when publishing notices of procurement.
- Federal government procurement portal MYPROCUREMENT and all state government procurement portals should name the successful bidder, their offered price and their project completion/delivery date.
- When publishing the award of contract to a successful bidder, Federal government procurement portal MYPROCUREMENT and all state government procurement portals should also disclose the grounds of contract award.

4.1.7 Lack of monitoring, management and evaluation of performance of suppliers/contractors

Suppliers may deliver goods and services that are different from the specifications, design, quality and quantity stated in the government procurement documents if no monitoring is done by the procurement agency. Similarly, for construction work, even though a contractor may have been awarded a project through a competitive quotation/tender processes, poor quality of work and delays of completion of the project may still occur if no proper monitoring is conducted during the construction period by the procuring agency.

It is clearly stipulated in the procurement policy and rules of regulations of Malaysia that the government procuring agencies may inspect and test the goods, services and works procured during production period or at any time before delivery. Bidders are required to facilitate such checking and testing when needed. The procuring agencies also have the right to reject low quality goods, services and works. They also have the right to reject goods, services and works which are different from given specifications in the agreement. However, many cases point to the failures in utilizing such rights when necessary.

⁶⁵ See Article 7(xiii)(c)(4) and Article 8(xiv)(a)(4) of Treasury of Malaysia Circular PK 2.

⁶⁶ Annex 2.3, Treasury of Malaysia Circular PK 2.

Again, in many instances of government procurement, it is apparent that the monitoring and evaluation of the performance of vendors/contractors are either haphazardly done or sorely lacking.

For example, in the construction of the Kuching new prison (Case study 1), the Auditor General revealed that the Malaysian Prison Department of Malaysia actually did not have any technical personnel to monitor the construction of the new prison and payments were approved despite poor quality of work and maintenance.⁶⁷

In the case of the construction of a new sewerage system, and the upgrade and repair of the existing sewerage system (under the Ninth Malaysia Plan with an allocation of RM3.162 billion and the Tenth Malaysia Plan with an allocation of RM464 million), the Auditor General found that the effluent quality of 9 out 16 sewerage treatment plants (56.2%) did not meet the effluent discharge standards set by the Department of Environment (DOE) due to the lack of monitoring by the Sewerage Services Department (SSD) that procured the project. ⁶⁸

In the case of the hospital information system (HIS) maintenance project procured by the Ministry of Health, there was an overpayment of RMo.54 million to the contractor (Systematic Conglomerate) in claims for vacant/absent HIS project team members. This was due to the lack of monitoring by the Ministry. The same problem also led to an estimated difference of up to RM23.95 million between payment claims made to the Ministry and actual payments incurred by the contractor. In addition, hardware which did not require maintenance were included in the list of hardware maintenance causing an increase of RM1 million in maintenance cost.⁶⁹

Similarly, if the Ministry of Defense had monitored the construction process of the living quarters for its married personnel (Case study 2) and inspected the final products by Syarikat USL in accordance to the procurement procedures, the Ministry of Defense should have rejected the appallingly poor quality of the living quarters, as suggested by the Auditor General.⁷⁰

Immediate steps to be taken:

- Consultant should be employed to monitor, manage and evaluate projects when necessary.
- Performance report of vendors/contractors for each public procurement should be kept in a database that is accessible to all government agencies for reference in procurement management.

4.1.8 Lack of disciplinary actions and legal actions on non-compliances

There have been many cases of non-compliance of the procurement policies and regulations by the procuring agency and the government officials of the concerned agency. However, disciplinary action against such procuring agencies and officials has been rare, let alone prosecution on the ground of abuse of powers, breach of trust and corruption.

⁶⁷ Page 55, Synopsis – Auditor General's Report for the Year 2010 on the Audit of the Federal Government's Financial Statement, Financial Management and Activities of the Federal Ministries/Departments and the Management of Government Companies.

⁶⁸ Pages 29-30, Auditor General Report 2012 - Activities of the Federal Ministries/Departments and the Management of Government Companies, Series 2, https://www.audit.gov.my/images/pdf/LKAN2012/Persekutuan/Siri2/synopsis%20lkan2012%20siri%202%20-%20a5.pdf

⁶⁹ 'Printer maintenance is 72 times purchase price', *Malaysiakini*, 17 October 2012, http://www.malaysiakini.com/news/211826; and pages 67–68, Synopsis of Auditor General's Report for the Year 2011 on the Audit of the Federal Government's Financial Statement, Financial Management and Activities of the Federal Ministries/Departments and the Management of Government Companies, https://www.audit.gov.my/docs/BI/LKAN2011/Federal/LKAN%202011%20-%20Synopsis%20(ENGLISH).pdf

⁷⁰ Aidila Razak, 'Defence Ministry pays RM3.2bil for shoddy quarters', Malaysiakini, 16 October 2012, https://www.malaysiakini.com/news/211730#ixzz4lIrTDBva

For example, in the case of the poor quality of living quarters for the personnel of the Ministry of Defense, the contractor Syarikat USL was fined RM87.12 million for the delays. However, payment was waived by the Finance Ministry, following an application by the Ministry of Defense. The Auditor General criticized the decision, as the exemption of the fine caused losses and undermined government interest. The Auditor General also recommended that the Ministry of Defense blacklist Syarikat USL.

In fact, Syarikat USL should have long been blacklisted. It was found to have been responsible for the poorly-built Subang airforce quarters, which were completed in 2006. Similarly, furniture provided was of poor quality. Bed frames, chairs and tables were made of "easily-broken, low quality, thin plywood", while some could not fit into the rooms as the items did not meet specifications. Despite this, the Ministry of Defense had issued a 'certificate of making good defects' (CMGD) in February 2009 to indicate that repairs had been completed.

In the case of the Sultanah Nora Ismail Hospital upgrading project, the Auditor General recommended that the contractor Sejagat Bakti be slapped with Liquidated and Ascertained Damages (LAD) of RM13.34 million, even with an issued Certification of Practical Completion (CPC) despite the project being incomplete and plagued with a slew of issues and non-compliance. The LAD was eventually imposed by the Works Ministry after a second extension application by the contractor was rejected by the Works Ministry. However, the Finance Ministry approved the LAD exemption for Sejagat Bakti on 3 July 2015.⁷¹

In 2013, the Home Ministry was found to have paid for furniture for an incomplete Royal Malaysia Police battalion camp amounting to more than RM750,000, although the furniture purchased was not yet supplied and the payments were supported by forged documents. It was also reported that local bidders were not invited to give their quotations and the procurement was not done through the Panel System of Central Contract. The Auditor General recommended the Ministry to take disciplinary action or surcharge against those responsible for improper payments.⁷²

In the case of the hospital information system (HIS) maintenance project procured by the Ministry of Health, the government only decided not to proceed with the contract extension of Systematic Conglomerate by another three years in July 2012, after the case received media and public attention due to the slew of glaring non-compliances with the public procurement policy of the government.

This problem is made worse in the state of Penang and Selangor as both the state governments do not have full authority in the employment of its civil servants as this falls under the jurisdiction of the federal government. According to an accountant in the local authority of Selangor, there are no specific and clear guidelines how to prevent or even punish government officers for breaching trust, misconduct and negligence in relation to procurement.⁷³

Immediate steps to be taken:

- Disciplinary action should be taken by the head of agency or controlling officer on public officials for non-compliance of public procurement policy.
- For more serious cases involving corruption and bribery, criminal legal action should be instituted against perpetrators.

⁷¹ See "AG Report: Take action over problematic RM200.7 million hospital upgrading project", The Sun Daily, 23 November 2017, http://www.thesundaily.my/news/1618727

⁷² Page 45-47, Auditor General Report 2014 – Activities of the Federal Ministries/Departments and Management of the Government Companies, Series 1, https://www.audit.gov.my/images/pdf/LKAN2014/Siri1/Persekutuan/LKAN2014%20siri%201%20-%20Synopsis.pdf

⁷³ Wee Shu Hui, Radiah Othman, Normah Hj Omar, Rashidah Abdul Rahman and Nurul Husna Haron, 'Procurement Issues in Malaysia', International Journal of Public Sector Management 24(6) 2011, Page 580, https://www.academia.edu/3615326/ Procurement issues in Malaysia.

4.2 WEAKNESSES IN EXTERNAL OVERSIGHT MECHANISMS

4.2.1 Lack of External Oversight Mechanism to Curb Corruption, Cronyism and Nepotism

While some of the incidence of non-compliance with public procurement policy may be attributed to negligence or inexperience of public procurement officials, one cannot explain the massive leakages and wastage in public procurement of Malaysia without factoring in the problem of corruption, cronyism, and nepotism in public procurement and the lack of disciplinary action and prosecution against them.

There are several forms of corruption, cronyism, and nepotism in public procurement as below:

- **Kickbacks** are illegal secret payments that are made as a return for a favor or a bribe and were usually calculated in the form of a percentage, a share, a cut, a commission or a payoff. The alleged kickbacks of RM500 million in the Scorpene submarines scandal is a case in point.
- Bid-rigging happens when bidders collude with one another to keep the bid amount at a pre-determined level. This intentional manipulation as done by the members of the bidding group who submitted common bids, discourages price wars. The interested bidders would agree in advance the following details: who would submit competitive bids, at what prices, who would win and how the profits would be shared among the bidders. Sometimes, this process would involve public officials, who are responsible for conducting the tendering process and who are willing to collaborate with the bidders in the bidrigging fraud.
- **'Front' or 'shell companies'** may be created by a public official usually in the name of a spouse, a close relative, a friend or even using a fictitious name, with the intention to commit fraud. Often the shell company proves to be nothing more than a fabricated name and a post office box or mail drop address that a public official used to collect the fruits of the fraud. Using the shell companies, the corrupt public officials could 'fix' the tender processes and put artificial pressure on the other bidders in order to ensure that their company would secure the contract being awarded and benefit from it. Again, the case of in point is the Scorpene submarines scandal, in which Perimeker Sdn. Bhd. was awarded the contract. Perimeker Sdn Bhd is owned by KS Ombak Laut Sdn. Bhd., which in turn is owned by Razak Baginda, aide to Najib Razak. The conflict of interest is glaring.
- Excess payments made to legitimate vendors could occur when dishonest vendors do the following: either they submit multiple bills on different contracts or on work orders for work performed, or they intentionally submit false bills even though the expense was incurred only once (meaning that no services were provided), or they submit duplicate or inflated invoices. A fraudulent public official could collude in this scheme and share in the profits by writing similar work orders under different contracts and accepting the multiple billings. Thus, this would create unnecessary surplus claims to the vendors involved, known as 'excess payments'.
- **Misrepresentation of facts** refers to bidders or vendors who lie about their previous contracts secured or make exaggerations of their previous experience in order to secure the contract from the government. In this case, fraudulent public officials conspire with the selected bidder to enable the bidder to earn a contract when in actual fact, the bidder would not have won if the rules of the tender had not been modified to the bidder's advantage.⁷⁴

⁷⁴ Rohana Othman, Husein Zakaria, Norlaili Nordin, Zamzam Shahidan and Kamaruzaman Jusoff, 'The Malaysian Public Procurement's Prevalent System and its Weaknesses', American Journal of Economics and Business Administration 2(1) 2010, pages 9-10.

The above incidents are not new in Malaysia. In a study conducted on public procurement of Malaysia in 2007 by a lecturer from UKM, it is reported that a public procurement officer for Penang claims that some officers in the Technical Department are very close with contractors and this relationship might jeopardize their professionalism when they are asked about the estimates for upcoming projects. These confidential estimates are sometimes leaked out when they are keyed in by lower ranking staff. In another case, a representative from a ministry claims that there were officers who worked together with contractors to come up with five quotations. They arranged to share the profit equally if any of their quotations were selected. This is possible as the the insider would leak information about of the pricing that contractors should quote when they tender.⁷⁵

On 12 November 2013, former Assistant Director of the Department of Community Services of Subang Jaya Municipal Council (MPSJ), Azhar Ahmad Faizal was found guilty and sentenced to 60 years' imprisonment and a fine of RM1,280,600 (or 15 years' imprisonment, in default). He was charged under section 18 of the MACC Act 2009 and under section 471 of the Penal Code for making false claims relating to the supply of signage boards and rubbish bins.⁷⁶

While MACC is supposed to act as an external oversight mechanism to curb corruption, cronyism, and nepotism, it is guilty of only acting against minor cases: it catches the small fry but is unable to hold the big sharks accountable. This is epitomized by the lack of action against the former defense and prime minister, Najib Razak in the case of Scorpene submarines scandal, the 1MDB scandal, and the ECRL project.

The independence and effectiveness of the overall external oversight mechanisms on anti-corruption are further compromised after the sacking of the Attorney General Abdul Ghani Patail, the resignation of the MACC chief commissioner, Abu Kassim Mohamed, the leaving of two of his deputies, Shukri Abdul and Mustafar Ali, the early retirement of the governor of Bank Negara Zeti Akhtar Aziz, and the reshuffling of Public Accounts Committee of Parliament following the 1MDB saga in 2016.

The only remaining independent institution is the Auditor General's Office. Nevertheless, the mandate of Auditor General is to audit the accounts of government agencies but has no power to take action against perpetrators of wastage, leakages and corruption. It may only make recommendations to the government, which have been ignored most of the time by the government. While the annual reports of the Auditor General are extremely important in shedding light on the problems of the procurement system of Malaysia, it is made only after the fact: the incidents of wastage, leakages and corruption have irrevocably taken place. In the 1MDB case, the audit report prepared by the Auditor General was even placed under the Official Secret Act and made unavailable to the public.

Immediate steps to be taken:

 Give adequate resources to the office of Auditor General to expand its audit, covering more government agencies on compliance of procurement policy in a more regular and wider manner.

⁷⁵ Wee et al. 2010, Procurement Issues in Malaysia, Page 581.

⁷⁶ Malaysian Anti-Corruption Commission Annual Report 2013, Page 101. See http://www.sprm.gov.my/index.php/en/corporate-info/resource-centre/annual-reports/book/230-macc-annual-report-2013/31-annual-report

Conclusions and Recommendations for Improvement

The current procurement regime of Malaysia is quite comprehensive but not without its weaknesses.

This report has outlined the entire process of procurement exercises, from the planning of yearly procurement, methods of procurement, organizing of calls for quotations and tenders, to the selection of bidders with relatively good measures put in place to ensure the objective of best value for money is achieved. However, this procurement regime would be more complete with the incorporation of a more detailed sets of measures, processes, criteria, and checklists for monitoring of production of goods and services or construction of buildings and inspection of final products. The steps should be outlined in the Treasury Circular Letters and Instructions.

While the procurement system of Malaysia has certainly improved in terms of opening data related to public procurement and making the processes more transparent with the implementation of the e-procurement system, there is still great room for improvement. Much more information and data should be made public in order for all stakeholders of public procurement and public members to ensure an effective and accountable procurement regime.

Nevertheless, the largest problem confronted by the procurement regime of Malaysia is not the design of its procurement system or the policies, but the implementation of the policies by public officials themselves. The non-compliance with stipulated requirements, such as proper planning of annual procurement and drafting of specifications, using open tender for procurements above RM500,000, monitoring the quality of production or construction processes, inspecting compliance with specifications of final product before making payments, taking disciplinary actions against non-complying vendors/contractors/public officials, et cetera, are glaring and rampant in public procurement in Malaysia.

No matter how good a public procurement policy can be, it will amount to nothing if there is no implementation or observation by public officials.

The matter is made worse by the failure of Ministry of Finance, who establishes the procurement system and policy and is entrusted to enforce the policy. They failed to follow and abide by theirT own rules. This leads to the failure in the enforcement of the procurement policy by all government agencies and the lack of disciplinary action against non-compliance. Consequently, the culture of corruption, cronyism and nepotism grows with impunity in the public procurement sector, which in turns contributed to massive siphoning of public funds, wastage and leakages.

The improvement of procurement system and policy of Malaysia will be a futile effort if the question of enforcement is not addressed. This points to the dire need for an independent mechanism and closer cooperation with other institutions such as the Auditor General, the Malaysian Anti-Corruption Commission, and the Attorney General to ensure effective enforcement of public procurement policy.

RECOMMENDATIONS FOR INTERNAL CONTROL MECHANISMS

Recommendation 1: Conduct Proper Needs Assessment, Cost and Benefit Analysis and Market Survey before Embarking on Procurement

Professional and independent needs assessments, cost and benefit analyses and market surveys should be conducted before any decision on procurement. Such reports should be made publicly available for public scrutiny.

In the case of defense procurement, which may involve sensitive information on national security and should not be made public, it is recommended that a **Parliament Select Committee on Defense** should be established to review reports on needs assessment, cost and benefit analysis and market survey submitted by the Defense Ministry.

Recommendation 2: Annual Planning of Procurement should be Conducted by All Government Agencies

All government agencies at federal, state and local level, should conduct planning of its procurement in the coming year as outlined in the Treasury Circular TK2. While the list should include all procurement according to goods, services and works, budget allocation and estimate date of procurement for the discussion of the procurement board of the agency as required by the Treasury Circular TK2, all government agencies should additionally include the method of procurement procedures chosen for each and every procurement of goods, services and works, as well as the justification for them. All government agencies should also develop the specifications as clearer as possible for each and every procurement of goods, services and works.

Recommendation 3: Reduce Procurement Threshold of Goods and Services Using the Method of Quotation from RM500,000 to RM200,000

The threshold for procurement of goods and services using the method of quotation should be reduced from RM500,000 to RM200,000 to reduce the risk of abuse of the quotation method. This revision should be reflected in all procurement policy documents, especially in the Treasury Circular Letters and Instructions.

Recommendations 4: Make MYPROCUREMENT Website a One-Stop Procurement Portal for All Public Procurement of Federal Government and Agencies

As in South Korea, a one-stop e-procurement portal should be established for all public procurements of federal government and agencies. This will make it easier for all stakeholders to follow the announcement of notices, the award of contract and any changes of law or regulations on public procurement by all government agencies instead of following many different portal of government agencies as it is now. MYPROCUREMENT portal can be the one-stop procurement portal for the federal government.

Recommendation 5: Establish and Review Annually the Contractor Database with Their Performances

Besides the database of PKK and CIDB, such vendor databases should also keep performance reports of vendors in public procurement projects. Assessment of the performance of vendors can be updated in the profile of vendors and category of good and bad vendors can be created. This should be accessible by all government agencies to assist any public procuring agency in avoiding bad suppliers/contractors based on past performance. This database should be updated and audited annually.

Recommendation 6: Publish Bill of Quantity, Specifications and Design, Methods of Procurement Procedure Used and Criteria for Selection for All Public Procurements

Procuring agencies should publish bills of quantity, specifications and design, method of procurement procedure used and the criteria for selection, especially in the procurement of works, when making announcement of procurement notice in newspapers and procurement portal. This would not only allow all interested vendors to view what is required in order to participate in the bid, but also facilitate the access to information for public members or local community, who are not only stakeholders but also taxpayers and beneficiaries of public projects such as roads, bridges, hospitals etc. With the full knowledge of the above for any project, they will be able to assist government in checking corruption, cronyism and nepotism and monitoring the implementation of public procurement projects.

Recommendation 7: Publish Decisions on Award of Contract and the Justification for Selection and Rejection

The decision of contract award in all public procurements should be made public in the one-stop e-procurement portal, complete with the name of the company awarded the project, the price, the date of commencement and completion of project and the features and justification for the selection of the successful bidder, as well as the reason for the rejection of other bidders.

Currently, the procuring agency is only required to publish the name of successful bidder, the offered price and date to complete the project. No explanation is given for the decision even though there are minutes taken for the meeting of quotation committee or tender board, including the reasons for approval or rejection of bidders. While it might not be possible to make public the minutes, in the interest of transparency and instill public confidence in decision—making of the procuring agency, it is recommended that additional information on the decision made can be disclosed, such as listing the top 5 bidders with ranking, their scores in different category of consideration, and a brief explanation of key factor for the successful bidder to be selected. Procuring agencies may also consider writing to unsuccessful bidders to explain their failure in winning the bid, so that they may improve in future as a collaborative partner of the procuring agency.

Recommendation 8: Improve In-progress Monitoring and Inspection of Final Products in Treasury Circular Letters and Instructions

The current Treasury Circular Letters and Instructions do not have sufficient detail and concrete steps that should be taken to monitor the production process of goods or services or the construction process of works. There is also no mention of the steps to inspect the final products to ensure the quality and specifications are met before the acceptance of the final products.

Hence, the Treasury Circular Letters and Instructions should be revised to incorporate the components of monitoring and inspection of the performance of vendor/contractor in delivering the job. The steps should include designating officials to conduct monitoring and inspection (from the beginning of award of contract until the completion of project), regular monitoring and inspection (including site monitoring report for works procurement), and establishing checklists first, to ensure all aspects of monitoring and inspection are covered to ensure quality, progress and specifications are met and then a final checklist for inspection of final product before accepting the final product and making payments.

Recommendation 9: Rotate Members of the Agency Procurement Board Regularly

Corruption, cronyism, and nepotism are enabled when procuring officials sit in a position for far too long. Officers involved in the procurement process should be periodically rotated and subjected to periods of mandatory leave to allow a covering officer to take over the procurement process and they should be placed under regular security vetting. The vetting process should include checks with credit bureaus and on assets held by the officers and their family members to identify any unexplained wealth.

Recommendation 10: Mandate Assets Declaration by Public Procurement Officials

Public officials, especially ministers, high-ranking public officials and procurement officials, who are involved in public procurement processes should be made to declare their assets annually to MACC. This would enable MACC to monitor possible abuse of power, corruption, cronyism and nepotism in public procurement by public officials.

Recommendation 11: Set KPI and Incentives for Procurement Officials

There should be clear key performance indicators (KPIs) set for public officials involving in managing public procurement, especially in reducing wastage, leakages, delays of project completion and corruption. Their performance should be assessed annually and incentives should be given for those who achieved their KPIs, especially in cost-saving for public procurement. This can be evaluated in many ways—for instance, based on money saved in comparison with past purchases, etc..

Recommendation 12: Strengthen Internal Audit Mechanism in all Government Agencies

The internal audit mechanism on compliance with established procurement policy should be enhanced. This can be carried out by an internal audit unit in government agencies. Such a unit should be given adequate training and guidance on audit of procurement implementation and prevention of corruption, cronyism, and nepotism in public procurement. It should conduct regular audits and inspections of compliance with the procurement policies, including spot checks.

RECOMMENDATIONS FOR EXTERNAL OVERSIGHT SYSTEMS

Recommendation 13: Establish a Government Task Force to Review and Reform Procurement Regime

A government task force should be established to review existing procurement policy and investigate glaring cases of non-compliance with procurement policy with the objective of producing recommendations to reform the existing procurement regime. The members of the task force may include the Auditor General, the chief commissioner of MACC, the Attorney General (or their respective representatives), as well as representatives from the business sector and civil society. The task force should have the power to access any procurement information from any government agency, to question any public official or other stakeholders in public procurement or to hold public inquiries. The report and recommendations of the task force should be implemented by the government.

Recommendation 14: Strengthen the role of the Auditor General's Office in public procurement

As an external audit mechanism, the Auditor General should be given the power to conduct external audit of government agencies on their compliance with the official public procurement policy and rules. Such audit exercise should be conducted regularly and systematically to cover as many government agencies as posible throughout the year to identify problems before they deteriorated. In cases of serious violation, the office of Auditor General may refer such cases to the police or MACC for further action, which may including disciplinary action or criminal charges.

Recommendation 15: Establish an Independent Ombudsman Office as a Public Complaint Channel

An Ombudsman Office should be established as an external and independence check and balance mechanism to ensure the implementation of the procurement policy and to prevent misconduct by public officials, especially those involved in managing public procurement. The Ombudsman Office should also serve as a channel for public complaints, especially for bidders who feel that their bids have been unfairly and unjustly treated and for public members who have complaints on the poor quality of public infrastructure and amenities procured by government agencies. The appointment of the Ombudsman should be conducted in a transparent manner with public participation. Only individuals with high integrity, competence in public administration and a proven track record in anti-corruption should be selected and appointed to the ombudsman. The Ombudsman Office should have the necessary authority to conduct investigations, public inquiries as well as spot checks on government agencies and public officials. It should have the power to discipline and sanction public officials, including through measures of demotion, fines, suspension, transfer, sacking, *et cetera*.

Unsuccessful bidders should be allowed to be make appeals to this Public Procurement Office, especially on non-compliance of the procurement policies and regulations.

Recommendation 16: Establish a Special Ombudsman Office on Defense Procurement

In view of the complexity and the importance of confidentiality in the procurement of national security and defense system and equipment, which is also the most susceptible to power abuse and corruption, it is recommended that a separate Ombudsman Office on Defense Procurement should be established, as pioneered by South Korea. Members of this Ombudsman office must be individuals with personal integrity and experience in the field. To prevent conflict of interest, a person appointed to the ombudsman's office or the person's family members must not have worked for a defense company or research institute for the last two years before the appointment as an ombudsman.

Recommendations 17: Establish a Constitutional and Independent Body on Anti-Corruption

In view of the many cases of non-compliance with procurement policy stemming from the failure of the Finance Ministry, whose minister was also the prime minister during the BN rule under Najib Razak, to lead by example and to enforce the procurement policy, there is an urgent need to establish a truly independent anti-corruption body in the form of Independent Anti-Corruption Commission (IACC) with constitutional status, as suggested by the Malaysian Bar Council. The IACC should have the power to receive public complaints and investigate major procurement cases that are in violation of public procurement policy. There should be tenure security for the chief commissioners and other commissioners in order for them to act without fear and favor. They can only be removed through a tribunal process. At least 40% of the commissioners in the IACC should be made of members from civil societies who have relevant experience in the fight against corruption. The IACC will provide oversight to the MACC, which will be renamed to Anti-Corruption Agency (ACA). The IACC will be responsible for the appointment, promotion and discipline of the ACA officers.⁷⁷

The model of South Korea's Ombudsman Office on Defense Procurement as best practise in the field. It was selected as the best case in the field of defense procurement within OECD countries, the best case in the 13th International Anti-Corruption Conference held in Greece in 2008, and the best case in the 60th Anniversary of NATO held in USA in 2009.



THE CENTER TO COMBAT CORRUPTION AND CRONYISM (C4 Center)

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The Center to Combat Corruption and Cronvism (C4 Center) is a policy advocacy, non-profit center, dedicated to fighting corruption, cronyism and its related problems at all levels of government.

We seek to open up governments and change the culture of governance by placing accountability, transparency and integrity at the heart of public policy and administration.

C4 Center works with public institutions, governments, political parties, and civil society organisations to build our vision of a corruption-free and open society.

MAJOR ADVOCACY AREAS

Political Financing and Cross-Border Corruption: We initiate political-legal research to publicly publishing reports on public mismanagement, push government agencies to be independent and accountable, and spearhead a good governance agenda programme.

Freedom of Information (FOI): We work towards embedding the culture of transparency in government, establishing a Federal FOI Law, increasing the proactive publication of data, strengthening whistleblower rights and aiding communities in using their rights to access public information.

Forest Governance and Sustainable Development: Recognising graft and abuse of public office within municipal councils and land administration, we put in effort to reach out to communities and to champion sustainable development as a anti-corruption issue.

Closing Civic Spaces: Authorities are increasingly narrowing civic spaces where citizens are free to exercise their right to demand accountability. We take on digital, alternative and innovative methods to engage with publics to ensure their voices are heard – through board games, apps and websites.

International Initiatives: We work with the UNCAC Coalition and the Conference of State Parties in support of the UN Convention Against Corruption, and are driving asset recovery advocacy for laundered funds originating from Malaysia.

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