Public Procurement World - Malaysia

2. Application of the Statutory Procurement Laws

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# a. Which public agencies are covered by the laws?

The Treasury Instruments apply to all instances where procurement is funded using public money. Examples of public agencies covered by the Treasury Instruments are government hospitals and various ministries carrying out procurement using public money.

# b. Which private entities are covered by the laws?

We are not aware of any private entities in Malaysia which are covered by the Treasury Instruments.

# c. Are co-operations between contracting authorities exempted from public procurement law? If so, what are the conditions for the exemption?

No.

# d. Which types of contracts are covered?

All contracts for works, supplies and services.

# e. How are changes to an existing contract dealt with? Do changes require a new procurement procedure?

Any amendments to an existing government contract can be made subject to the following key conditions for variation as set out in the Treasury Circulars:

For supply and service contracts:

the contract must still be in force at the time of application for variation;

the variation does not involve changes to the price and other conditions in the contract;

extension can only be granted once and up to 2 years;

for supply contracts, additional quantity must not exceed 50% of the original contract subject to a maximum additional value of RM 7.5 million and further subject to the value of the overall contract not exceeding RM 25 million;

for service contracts, additional value must not exceed 50% of the original contract subject to a maximum additional value of RM 7.5 million and further subject to the value of the overall contract not exceeding RM 25 million.

For work contracts:

the contract must still be in force at the time of application for variation;

the variation does not change a significant part of the original scope of work;

for additional work, the execution must be carried out at the contract construction site;

for replacement work, the variation must be within the scope of the original contract and the original work as outlined in the original contract scope must be identifiable in the replacement works.

Such changes do not involve a new procurement procedure.

# f. What is the applicable regime for framework agreements?

There is no applicable regime for framework agreements in the Treasury Instruments.

# g. What is the applicable regime for public-private partnerships (PPPs)?

Public-private partnerships are governed separately by the Public Private Partnership Unit ("**UKAS**") in the Prime Minister's Department. There is neither a specific legal framework nor legislation for PPPs in Malaysia. There are guidelines on PPPs which seek to clarify the key principles of Malaysia's PPP programmes. The Treasury Instruments may apply where a PPP is funded using public money.

# h. How are concessions dealt with?

There is no separate regime for concessions. Where a concession is funded using public money, the Treasury Instruments may apply.

# i. Are there anti-avoidance rules (including laws on bid rigging)?

The Competition Act 2010 ("**CA**") prohibits any agreement that has the object or effect of significantly preventing, restricting or distorting competition in any market for goods or services. The CA further provides that a horizontal agreement between enterprises which has the object to perform an act of bid rigging is deemed to have the object of significantly preventing, restricting, or distorting competition in any market for goods or services. The Malaysian Competition Commission can impose a financial penalty of up to 10% per cent of the worldwide turnover of an enterprise over the period during which an infringement occurred.

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