

Trade Policy Review Body

TRADE POLICY REVIEW

MALAYSIA

Report by the Secretariat

This report, prepared for the fourth Trade Policy Review of Malaysia, has been drawn up by the WTO Secretariat on its own responsibility. The Secretariat has, as required by the Agreement establishing the Trade Policy Review Mechanism (Annex 3 of the Marrakesh Agreement Establishing the World Trade Organization), sought clarification from the Government of Malaysia on its trade policies and practices.

Any technical questions arising from this report may be addressed to Mr. Mario Kakabadse (tel: 022 739 5172).

Document WT/TPR/G/156 contains the policy statement submitted by the Government of Malaysia.

Note: This report is subject to restricted circulation and press embargo until the end of the first session of the meeting of the Trade Policy Review Body on Malaysia.

(v) Government procurement

43. The Malaysian Government is an important purchaser of goods and services. According to the annual budget allocation (Table III.4), the government procurement market was estimated to be worth RM 92.7 billion or 20.6% of GDP in 2004, of which over RM 49 billion was federal government expenditure on supplies and services, and development. A further RM 33.5 billion was expenditure by non-financial public enterprises (GLCs). The scale of government procurement in Malaysia provides a great deal of scope for its use as an instrument of economic policy.

Table III.4
Government procurement, 2001-04
(RM million)

	2001	2002	2003	2004
Federal Government expenditure on supplies and services	10,703	11,269	13,968	18,133
Federal Government development expenditure	35,235	35,977	39,353	31,131
State Government development expenditure	4,704	3,772	3,817	4,710
Local Government expenditure	2,176	2,322	2,482	1,931
Statutory bodies development expenditure	3,088	3,841	4,180	3,374
Non-financial public enterprises	24,033	32,297	40,160	33,454
Total	79,939	89,478	103,960	92,733

Source: Estimated from Ministry of Finance, *Economic Report 2004/2005*, Annex tables 4.4, 4.6, 4.10, 4.11, 4.12 and 4.13. Available at: <http://www.treasury.gov.my/le2005/le-05.htm>.

44. Malaysia's government procurement policy is consistent with the national policy of nation-building. It is used to support national objectives such as encouraging greater participation of the bumiputeras (indigenous Malays), in the economy, transfer of technology to local industries, reducing the outflow of foreign exchange, creating opportunities for local service-oriented companies, and enhancing export capabilities. Malaysia has participated in the WTO Working Group on transparency in government procurement, but is not a party to the plurilateral WTO Government Procurement Agreement; it intends to maintain its requirement for all government agencies to procure supplies and services from local sources. International tenders will be invited only if goods and services are not available locally. Bumiputera tenders receive preferential treatment, which varies from 10% for contracts of RM 100,000 to 2.5% for contracts of over RM 15 million. Locally produced goods receive a preference of 10% for contracts below RM 10 million and up to 3% above this value. The Malaysian authorities have pointed out that tenders will be invited only from local manufacturers and therefore Bumiputera manufacturers will not be competing with international bidders. Where local contractors do not have the requisite expertise and capability, agencies may call for joint-venture bids (between local and foreign contractors) to encourage the transfer of technology. For projects funded by foreign sources, procedures for tenders are as stipulated by the respective sources.

45. The Ministry of Finance has main responsibility for government procurement issues. The Ministry's government procurement management division undertakes open local tenders for items such as office supplies. Government agencies, both federal and state, are then required to purchase those goods from the successful bidder. All goods and services tenders in excess of RM 30 million and works (such as construction or engineering services) over RM 50 million must be referred to the Ministry of Finance for decision. Tenders below these thresholds can be considered by Tender Boards in each federal government ministry. Government-linked

companies (GLCs) require government approval for purchases exceeding defined limits and, for example, Petronas, Telecom Malaysia, Tenaga Nasional have to refer to the Ministry of Finance when procuring goods and services valued at or exceeding RM 100 million. The Government encourages GLCs to follow government policies on procurement as far as possible.

46. Regarding the legal and regulatory framework, the Government Contract Act 1949 provides legal validity for the ministries to represent the Government in engaging contracts 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. In addition, government procurement is regulated by treasury instructions, treasury circulars, and central contract circulars.
47. Malaysia aims to achieve a high standard of transparency in its procurement policies and practices; it subscribes to the elements agreed upon in the Non-Binding Principles and to the APEC Transparency Standards. All agencies are required to procure all supplies, services and works above RM 200,000 through open tenders. To ensure transparency, tenders must be advertised widely in local daily newspapers, agencies' websites and on the myGovernment Portal. In 2000, the Government introduced an electronic procurement (eP) system, an on-line system designed to encourage competition among contractors and to expedite the procurement processes. The eP system also aims to reduce bidding costs and make the process more efficient and transparent; it is in the second phase of implementation. In 2004, the Treasury launched quotation and tendering modules in 14 selected ministries on a pilot basis.
