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Annex I Guidance Note

Prevention of corruption in procurement at various government levels, including good practices, lessons learned and challenges, and the effective use of technology to prevent, detect, deter and counter corruption in procurement

1. The Secretariat has produced this Guidance Note to assist States parties in providing information on initiatives and practices they have implemented regarding the topics under consideration at the fifteenth session of the Working Group on the Prevention of Corruption taking place from 28 August to 6 September 2024.
2. The Secretariat wishes to recall paragraph 12 of the report of the Working Group on Prevention on its second intersessional meeting, which noted that in advance of each meeting, States parties and signatories should be invited to share their experiences of implementing the provisions of the Convention under consideration, preferably by using the self-assessment checklist.
3. In furtherance of this, the Secretariat outlines a set of questions, based on those in the self-assessment checklist, which States parties and signatories may wish to use as a guide when providing information regarding the two topics under consideration. States parties and signatories are encouraged to view the questions below only as guidance and are free to provide any information believed to be relevant to the topics under consideration.

I - Information requested from States parties and signatories in relation to prevention of corruption in procurement at various government levels and the effective use of technology to prevent, detect, deter and counter corruption in procurement (arts. 9 and Conference resolution 10/9).

1. Please describe (cite and summarize) the measures/steps your country has taken (or is planning to take) to implement this provision of the Convention.

In relation to integrity in public procurement processes, States parties and signatories may wish to cite and describe measures that:

- Ensure the national procurement system is based on principles of transparency, competition and objective criteria in decision-making;
- Establishing in advance the conditions for participation, including selection and award criteria and tendering rules;
- Provide for sufficient time to potential tenders to prepare and submit their tenders and using by default an open tender procedure;
- Provide for transparent publishing of all procurement decisions including publishing the invitations to tender;
- Establish procedures, rules and regulations for review of the procurement process, including a system of appeal;

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- Provide for a thorough selection of personnel responsible for procurement, including screening procedures; as well as establishing a conflict of interest management system with declarations of interest and methods to resolve conflicts in particular cases;
- Put in place other administrative practices promoting integrity in procurement (such as the rotation of personnel, debarment procedures, etc.).

Q1 Answer (MOF):

Malaysia has taken significant steps to ensure its public procurement aligns with international standards of transparency and competition. Below are the measures that have been implemented or are planned to be implemented:

- 1) Malaysia's procurement system is founded on the principles of transparency, accountability, open competition, value for money, and fair dealing. These principles are upheld through comprehensive regulations and guidelines, including the Treasury Instructions and Treasury Circulars.
- 2) Malaysia has established clear conditions for participation in government procurement processes. These include:
 - (i) Selection and award criteria are clearly defined and communicated to all potential bidders in advance. These criteria emphasize the bidders' technical capability, financial stability, and track record of past performance.
 - (ii) Tendering rules are laid out in the Treasury Circular and include guidelines on how tenders should be prepared, submitted, and evaluated.
- 3) Malaysia ensures that potential bidders have adequate time to prepare and submit their tenders. The standard practice involves:
 - (i) Adequate notice periods are provided in all procurement advertisements to ensure wide participation. The notice period is a minimum of 21 days for domestic procurement and a minimum of 40 days for CPTPP procurement
 - (ii) The default procurement method is open tendering, which encourages broad competition and fair opportunity.
- 4) Transparency is a cornerstone of Malaysia's procurement process. Measures include:
 - (i) Publication of invitations for all procurement opportunities is done through a single official public procurement portal, the Myprocurement portal.
 - (ii) Results of procurement decisions, including details of the winning bidder and contract amount, are made publicly available through the Myprocurement portal.
- 5) Malaysia is currently developing comprehensive procedures to enhance accountability in the procurement process through a Dispute Resolution Procedure (DRP) in alignment with CPTPP.

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- 6) To ensure the integrity of the procurement process, Malaysia emphasizes the selection and training of procurement personnel.
 - (i) The Malaysia Office of the Chief Government Security (CGSO) conducts security vetting procedures to ensure that individuals entrusted with sensitive information, critical positions, or access to secure areas are reliable, and trustworthy, and do not pose a security threat to national interest.
 - (ii) A conflict of interest management system is in place, requiring declarations of interest from procurement officials and providing mechanisms to resolve conflicts.
 - (iii) Continuous training programs on public procurement procedures are conducted for all procurement personnel.

- 7) Malaysia has implemented several administrative practices to enhance integrity in procurement:
 - (i) Regular rotation of procurement staff is practiced to prevent collusion and corruption.
 - (ii) Suppliers and contractors involved in corrupt practices are debarred from participating in future tenders.
 - (iii) Continuous training programs on ethics and integrity are conducted for all procurement personnel.

Malaysia remains committed to upholding the highest standards of transparency, competition, and integrity in its public procurement system. These measures ensure that procurement processes are fair, efficient, and accountable, fostering public trust and contributing to national development goals.

By implementing these measures, Malaysia demonstrates its commitment to enhancing its public procurement framework in line with international best practices.

2. Please describe (cite and summarize) the measures/steps your country has taken, if any (or is planning to take, together with the related appropriate time frame) to promote the effective use of technology to prevent, detect, deter and counter corruption in procurement.

States parties and signatories may wish to provide information on measures that:

- Utilize technology, such as online platforms for the distribution of information relating to public procurement and tenders as a way to prevent corruption, enhance transparency and ensure competition and objective criteria in procurement decision-making.

Information sought may, in particular, include the following:

- Description of any electronic system of public procurement, including, for example:
 - The means by which tender invitations are published;
 - The inclusion of all pertinent information on the award of contracts;
 - Ways in which applications may be submitted (including the use of electronic

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- procurement platforms); and
- Ways in which the criteria to be used for selection and award are publicized.
- Any other ways, in which technology is used in the procurement process
- Any other ways, in which technology is used to detect corruption or identify irregularities.

When providing information on the use of technology to prevent, detect, deter and counter corruption in procurement, States parties and signatories may wish to refer to their submissions for the sixth meeting of the Working Group, held in 2015.

Q2 Answer (MOF):

Since 2018, Malaysia has been utilizing digitalization as a key tool in government procurement, aligning with established procurement rules and regulations. The introduction of the ePerolehan system marks a significant step towards enhancing transparency, efficiency, and integrity in the procurement process.

All central agencies must use the ePerolehan system for procuring goods and services. This requirement begins with the publication of the notice to tender. All suppliers registered with the Ministry of Finance Malaysia are automatically notified through the ePerolehan system about any tender invitations relevant to their business. Suppliers may participate in these tenders voluntarily.

The entire procurement process is conducted online, from the submission of tenders to the awarding of contracts, eliminating the need for manual intervention. This end-to-end digital process ensures efficiency and reduces the risk of corruption. Information about the winning bidders is published on the MyProcurement portal, which is accessible to the public, thereby enhancing transparency and accountability.

The ePerolehan system streamlines the procurement process, reducing administrative burden and processing time. By automating notifications and making the procurement process visible online, the system promotes transparency. Public access to information about awarded contracts ensures greater accountability and public trust in the procurement process.

3. Please outline actions required to strengthen or improve the measures described above and any specific challenges you might be facing in this respect.

Examples of the types of challenges States parties and signatories may have faced include:

- Challenges in developing the proper legislative framework;
- Coordination challenges between government agencies responsible for integrity in procurement and other bodies;
- Communication challenges between government bodies, agencies responsible for integrity in procurement, and business community representatives;

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- Other implementation challenges; and
- Financial challenges with respect to maintaining sufficient and consistent funding for government bodies and other government agencies responsible for integrity in procurement and management of public finances.

Q3 Answer (MOF):

To improve measures for enhancing integrity in procurement, Malaysia is taking the following actions, addressing specific challenges in each area:

1) Developing a proper legislative framework

Malaysia regularly reviews and updates its procurement laws to close loopholes and align them with international best practices. The country is enhancing monitoring and evaluation mechanisms to ensure compliance with procurement regulations.

2) Capacity building

Malaysia is investing in training and capacity building for procurement officials to ensure they are well-versed in best practices and ethical standards. Technology solutions, such as ePerolehan systems, are being adopted and integrated to streamline processes and enhance transparency. But, skill gaps among procurement officials and staff can impede the effective implementation of integrity measures. Also, resistance to adopting technology changes and changing established procedures can slow down progress.

4. Do you require technical assistance in relation to the measures described above? If so, please specify the forms of technical assistance that would be required. In case you have received or are receiving technical assistance to implement these measures, please indicate so in your response.

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