

## **Government Procurement Issues On TPPA**

**Bernama**

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KUALA LUMPUR, Nov 5 (Bernama) -- Following is the latest list of Frequently Asked Questions pertaining to the Trans-Pacific Partnership Agreement (TPPA) made available at the Ministry of International Trade and Industry (MITI) website at <http://fta.miti.gov.my/>.

There are seven main topics where the forth one is on government procurement.

Under the government procurement (GP) discussion, eight questions are answered on how TPPA can benefit the country.

### **1. What are the benefits of the GP Chapter to Malaysia?**

#### **Benefits to suppliers**

Malaysian suppliers are able to expand and penetrate overseas market through wider GP market access opportunities for their products and services.

For example, the Buy American Act restricts products and services that come from non-FTA (Free Trade Agreement) country to be supplied to the US Government.

With TPP, this restriction will be waived for Malaysian products, services and suppliers.

When Malaysian suppliers participate in GP of other TPP countries, they will be given the same treatment as the local suppliers and shall not be discriminated against in the procurement process. This means, a Malaysian company selling to Vietnam will receive the same treatment as Vietnamese suppliers.

Malaysian suppliers are also able to establish networking and integrated supply chain with TPP suppliers which they will enjoy from trade facilitation, reduced trade barriers and lower tariffs on imported materials/components.

The GP Chapter provides predictability to suppliers on the whole procurement process and reduce risk of doing business.

Suppliers are provided an avenue through Domestic Review mechanism to lodge complaints and challenge the agencies on irregularities of GP obligations throughout the whole tendering process as well as enable them to obtain fast and effective remedies.

#### **Benefits to Government**

The GP Chapter adopts good governance and best practices, enhances transparency in procurement processes and thus, brings greater alignment of Malaysia's GP to international practices.

Adherence to the GP chapter could be a platform for Malaysia to improve its global position, such as in the Global Competitiveness Index and Corruption Perception Index.

The Government will have better selection and obtain best value for money based on wider range of offers from local and international suppliers as a result of competitive bids.

## **2. How could local companies compete among other TPP companies?**

Malaysian companies would still be able to participate in Malaysia's GP market as usual and may have the advantage of understanding the local environment and structure. Furthermore, Malaysian companies could explore the possibility of establishing business partnership with other TPP companies to leverage on each other's strength and tap business opportunities in Malaysia as well as other TPP countries.

Malaysian companies should not fear the different levels of development between TPP countries. Malaysia has a competitive advantage particularly in exporting electrical and electronics, chemical products, palm oil products, rubber products, wood products, textiles as well as automotive parts and components. Therefore, Malaysian companies should take the opportunity to participate in the huge TPP GP market.

## **3. How is Bumiputera policy being preserved?**

The Government has ensured that Bumiputera policy in GP will continue to be implemented after TPP enters into force for procurement that is subjected to TPP. The measures include:

30% set aside for Bumiputera contractors in construction services open to TPP countries.

Price preference for goods and services to Bumiputera suppliers & manufacturers.

Central Contract on existing items.

For procurement that is not covered under TPP, the Government may introduce any GP measures to support the development of Bumiputera companies.

## **4. Can Malaysia continue to impose local content requirement?**

The Government can no longer impose local content requirement as conditions in the contract for procurement that is covered under the TPPA obligations.

Generally, the core principle of a free trade agreement (FTA) is to accord the products and suppliers of the FTA partners the same treatment as local products and suppliers.

Therefore, under TPP, the products and suppliers of other TPP countries will receive the same treatment as local products and suppliers. Likewise, Malaysian products and

suppliers will be accorded the same treatment when they participate in GP of other TPP countries. This will benefit Malaysian suppliers in having a fair opportunity to compete in government contracts.

Meanwhile, Malaysia is allowed a 12-year transition period to implement the obligation to prohibit offsets. Therefore, the Government may impose local content requirements within this period under the offsets programme.

## **5. Are all government agencies subjected to the GP obligations?**

All Ministries and agencies listed under the respective Ministries are subjected to the GP obligations.

Only a limited number of statutory bodies are subjected to the GP obligations. All state governments, local authorities and government companies are not

subjected to the GP obligations.

## **6. What are the flexibilities for Malaysia?**

This is the first time Malaysia is negotiating a GP Chapter in its FTA. Therefore, TPP countries acknowledge the need for Malaysia to be given certain flexibility before full compliance of the TPP obligations.

These include:

More favourable thresholds for goods, services and construction services and a longer implementation period.

Delayed application of Domestic Review Procedures (DRP). This recourse mechanism will provide fast, effective remedies for irregularities in the tendering process, starting from tender advertisement until award of contracts, relating to procurement conducted by agencies.

Delayed application of Dispute Settlement Mechanism (DSM). This recourse mechanism is for disputes to be settled between governments.

Delayed application of Investor-State Dispute Settlement (ISDS). ISDS provides recourse for disputes on GP contracts that has been awarded to a TPP company, provided the contract and the company meet the criteria set forth under the Chapter.

## **7. What are the safeguards for Malaysia?**

Malaysia managed to obtain a number of exclusions from GP obligations. Among the main exclusions are:

\* Entities that are not offered:

Some federal agencies.

All state governments and local authorities.

Most statutory bodies and all govt. companies.

\* All procurement below the thresholds.

\* Procurement in relation to:

Essential security interests.

Rural development and poverty eradication programmes.

Program Perumahan Rakyat.

Public Private Partnership (PPP) contracts.

Dredging services and slope works for construction services.

## **8. How can TPP companies take action against the Government for disputes on GP?**

Under the GP Chapter, companies (both local and TPP companies) can lodge complaints and challenge on procurement process or an award through Domestic Review Procedures. The complaints or challenges will be reviewed by an impartial administrative or a judicial authority. The recourse mechanism will provide fast, effective remedies for irregularities in the tendering process, starting from tender advertisement until award of contracts, relating to procurement conducted by agencies.

The Agreement also provides recourse for disputes on a country's compliance to TPP obligations through government-to-government under the Dispute Settlement Mechanism (DSM). The disputes will be reviewed by a panel.

In addition, there is another avenue, namely Investor-State Dispute Settlement (ISDS) under the Investment Chapter.

ISDS provides recourse for disputes on GP contracts that has been awarded to a TPP company, provided the contract and the company meet the criteria set forth under the Chapter.

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