

PUBLIC WORKS PROCUREMENT
THE EUROPEAN EXPERIENCE

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ABSTRACT

Public Procurement has been a major instrument for economic management and for socio-economic planning, as well as political stability among ethnic communities. In Malaysia, despite the abundance of safeguards in its Procurement Regulations, issues have still been raised in areas such as; inter-alia, non-disclosure of reasons for rejection of bids, over-budget projects and etc. Therefore, the question on “*whether there are any elements of ‘check-and-balance’ and ‘lesson-learnt’ from other countries’ policies and procedures*” needs to be considered, in the attempt to explore experiences from other countries and how the current system could benefit from it. In this regard, Ireland or Europe in general, has been chosen as the main focus of the case study, considering its extensive value in the total contribution of the European Union (EU) Public Procurement. Thus, the objectives of the research, which are to identify the fundamentals of European Public Procurement Principles and to discuss the fundamentals of the European Public Contract Award, are relevant in terms of concluding the essence of this subject matter. The objectives are achieved by analysing relevant regulations governing the implementation of the EU Public Procurement regime, which includes relevant statutes, judicial decisions and ultimately the EC Directive 2004/18/EC. The research found that, Malaysia and Europe seems to have the same values in the foundations of its Public Procurement Principles; i.e. emphasis on an open and transparent competition and the obligation on the Contracting Authority to apply clear, objective and non-discriminatory criteria in selecting tenders and awarding contracts. The research also found that it is paramount for Contracting Authorities to demonstrate such credibility its implementations at every stage of the procurement process. Additionally, it is also important for the public users and procurement personnel, to be fully abreast with the knowledge of the Public Procurement requirements and to be aware of their rights in the event that a contracting authority seems to infringe their duties under the procurement rules.

ABSTRAK

Perolehan Awam merupakan penggerak utama di dalam pengurusan ekonomi serta perancangan sosio-ekonomi sesebuah negara. Ia juga mempengaruhi kestabilan politik di kalangan masyarakat berbilangan etnik di dalam sesebuah komuniti. Di Malaysia, walaupun adanya panduan yang lengkap mengenai pengurusan Perolehan Awam, tetapi pelbagai isu masih dibangkitkan. Antaranya ialah kurangnya makluman rasmi mengenai alasan sesuatu bidaan tidak berjaya, banyaknya projek-projek yang melebihi bajet dan sebagainya. Oleh itu, persoalan "*samada wujudnya elemen 'semak dan imbang' serta unsur-unsur 'pengajaran' daripada polisi serta kaedah pengurusan negara-negara lain?*" wajar dipertimbang. Berdasarkan ini, negara dapat mempelajari pengalaman negara-negara luar serta mengkaji tentang bagaimana pengalaman-pengalaman berkut dapat memberi manfaat terhadap sistem yang digunapakai sekarang. Berikutan itu, Ireland atau Eropah secara amnya, telah dipilih sebagai tumpuan kajian. Ini berdasarkan nilai belanjawannya yang tinggi di dalam Perolehan Awam bagi keseluruhan Kesatuan Eropah. Selain itu, matlamat kajian iaitu untuk mengenalpasti dan membincangkan asas-asas utama di dalam Prinsip serta Kaedah Pemberian Kontrak Awam Eropah, adalah amat berkaitan di dalam perkara ini. Amnya, matlamat-matlamat berkenaan telah dicapai melalui analisa yang mendalam terhadap peraturan-peraturan pengurusan Perolehan Awam Eropah. Ini termasuk rujukan terhadap statut-statut, kes undang-undang serta rujukan terhadap EC Directive 2004/18/EC. Kajian juga mendapati terdapatnya persamaan di dalam prinsip asas Perolehan Awan Malaysia dan Eropah, iaitu pengurusan yang terbuka serta tanggungjawab untuk memastikan pengurusan yang jelas, objektif serta adil di dalam pemilihan serta pemberian bidaan awam. Selain daripada itu, adalah amat penting bagi pengguna serta pihak pengurusan untuk sentiasa peka terhadap perkembangan serta maklumat mengenai Pengurusan Awan, terutama terhadap hak pengguna sekiranya pihak pengurusan didapati tidak menjalankan tanggungjawab berdasarkan peraturan perolehan yang betul.