

Open Tender Policy in Penang - *Nurturing capable Malay contractors*

It must be fair when both sides cry foul. Barisan Nasional bedmates UMNO and the MCA have criticised Penang's open tender policy as being anti-Malay on one hand, and anti-Chinese on the other. One is tempted to suggest that neither side being happy suggests fairness in the process. But REFSA believes in facts. Let us delve deeper.

Malay contractors have won more than 70% of tenders. In fact, in the three years since Penang implemented open tenders, Malay contractor win rates have exceeded 90% at some state government agencies. This could be taken as evidence of Malay capability. But such high rates do seem disproportionate. Is there indeed some subtle discrimination at work?

It's all in the numbers. Federal government diktat is that only contractors licensed by the Ministry of Finance may bid for government contracts. 94% of licensed contractors are bumiputera. Furthermore, Class F licenses, for jobs below RM200,000 are exclusively for bumiputeras. It follows then that most contracts in Penang are won by bumiputeras. The state government is not being discriminatory - it is complying with federal government policies.

What's really relevant - capable bumiputras shine. 90% of licensed bumiputra contractors are at Class D or below. Conversely, nearly 1 in 4 non-bumiputra contractors are at Class A level. The Class F scheme to develop bumiputera contractors is a failure - only 0.2% have graduated to higher levels, as federal government tender award policies foster dependency. Open tenders in Penang however, reward the capable, and we would hope to see this environment nurture higher Class bumiputera contractors.

☛ Penang Chief Minister Lim Guan Eng says open tenders are anti-corruption, not anti-Malay or anti-Chinese.

☛ Malay contractors have won the vast majority of contracts in this new competitive environment.

☛ Non-Malay contractors, by virtue of being larger, still take a fair chunk, measured by value.

☛ REFSA sees this combination of open tenders + protection for bumiputeras as effective affirmative action.

Anti-Malay, anti-Chinese, or equitable?

Just two weeks after winning control of Penang state in 2008, the Pakatan Rakyat government made further history by mandating that all state procurement would be via open tender.

The open tender system operated by the state government is meant to promote merit and do away with favouritism. However, claims to the contrary have been made:

1. The implementation of this policy was fiercely criticised by UMNO leaders in the state opposition who saw it as an attempt to curtail Malay entrepreneurship and an affront to Malay and Bumiputera rights. In fact, UMNO leaders joined street protests against the open tender system¹.

It was suggested that Malay contractors would not be able to compete and would at the same time lose their rice bowl of government contracts.

2. While UMNO leaders alleged racist and discriminatory treatment against the Malay community, UMNO's partner in the Barisan Nasional, MCA charges that Chinese interests have been "threatened after DAP came into power".

Penang Wanita MCA chairman Tan Cheng Liang said the chief minister was "currying favour" with the non-Chinese community².

On the one hand, the Penang state government is accused of being anti-Malay, while on the other it is also anti-Chinese. "What we really are," quipped Chief Minister Lim Guan Eng, "is anti-corruption."

Going by the adage that if the two extremes are unhappy, the referee must be right; Penang must be doing the right thing.

But REFSA does not go for glib assessments. We analyse in more detail ...

¹ Street protest in Penang. 15 Mar 2008. Available at www.videos.thestar.com.my. Retrieved on 25 Nov 2011.

² Now MCA says Guan Eng is anti-Chinese. Malaysia Insider, 29 July 2011.

Malay contractors have won more than 70% of tenders

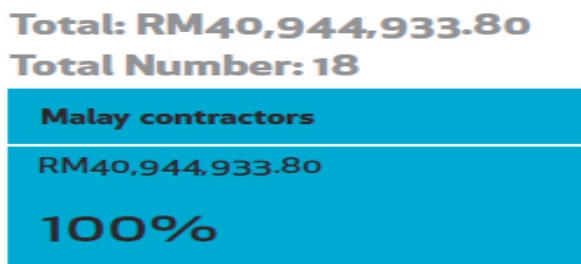
Fears of Malay contractors being rendered jobless can be firmly laid to rest. In fact, from a Malay contractor perspective, there is much to celebrate.

Malay contractors have won more than 70% of government tenders in the new, competitive, open tender environment in Penang, according to an article in the October issue of Penang Economic Monthly by Zairil Khir Johari³.

Malay contractors won:

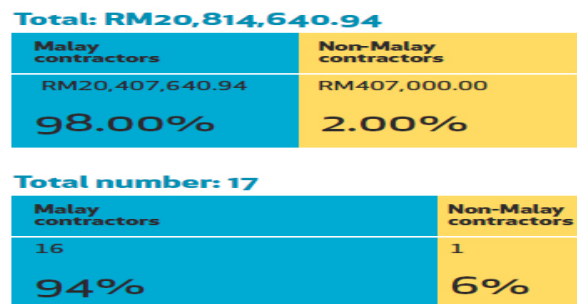
- 70% of the tender awards issued by the Penang Development Corporation (PDC) from Mar 2008 to Aug 2011;
- 94% of all Public Works Department contracts from 1 Jan 2008 to 30 November 2010. The proportion by value was even larger - 98%; and
- 100% of tenders offered by the Department of Irrigation and Drainage (JPS) from 2008 to 2010.

Figure 1: 100% of JPS tenders went to Malays



Source: Reproduced with permission from Penang Economic Monthly.

Figure 2: PWD - 94% by numbers, 98% by value



Source: Reproduced with permission from Penang Economic Monthly

Some would have hailed such results as testament to the professionalism and ability of Malay contractors. However, the MCA has criticised the Penang state government's open tender policy as disenfranchising the Chinese.

We agree that win rates in excess of 90% do seem disproportionate. Could there be some form of subtle discrimination at work after all?

Let us delve a little deeper.

³ Please see Acknowledgments at the back for details.

It's all in the numbers

It is a federal government regulation that only qualified contractors may tender for government contracts. A qualified contractor must be registered with:

- The Ministry of Finance (MoF), which also licenses the contractor in a category which ranges from A to F;
- The Contractor Services Centre (Pusat Khidmat Kontraktor - PKK);
- The Construction Industry Development Board (CIDB).

About 94% of registered government contractors are bumiputeras. In addition, the Class F category for tenders worth RM200,000 and below, is open to bumiputeras only.

The large numbers of successful Malay contractors in Penang follow from these numbers. Most tender awards will be won by Malay contractors since they make up 94% of the qualified contractor universe. Furthermore, all tenders for projects below RM200,000, in the Class F category, are open to bumiputeras only.

As MoF licensing and Class F treatment are within the purview of the federal government, there is no question of any discrimination on the part of the Penang state government, both in policy and implementation. The state government is merely complying with federal policies.

Of course, not all tenders fall under the Class F category. What about the bigger projects and contracts? Let us revisit the PDC example again:

- 70% or 37 of 53 tenders were won by Malays;
- By value though, non-Malays won 52% or RM138 million of the RM263 million on the table.

Figure 3: 70% of PDC tenders between Mar 08 and Aug 2011 were won by Malays

Total number: 53

Malay contractors	Non-Malay contractors
37	16
69.81%	30.19%

Source: Reproduced with permission from Penang Economic Monthly.

Figure 4: By value, 52% of tenders were won by non-Malays

Total: RM262,509,486.42

Malay contractors	Non-Malay contractors
RM124,952,977.71	RM137,556,508.71
47.60%	52.40%

Source: Reproduced with permission from Penang Economic Monthly.

F is for federal failure

Here is the rub. The gap between these numbers and values shed some light on the Class F phenomenon.

The MoF classifies contractors into six categories from A to F. The placing determines the contract amount that a contractor is qualified to bid for. The ceiling for a Class F contractor is RM200,000, while Class A contractors can bid for jobs worth RM10 million and more.

Figure 5: Ministry of Finance contractor classification system

Class	Finance limit/ Working cost (RM)	Paid-up capital/Minimum accumulated capital (RM)
A	More than 10,000,000	600,001
B	5,000,001 to 10,000,000	400,001
C	2,000,001 to 5,000,000	100,001
D	500,001 to 2,000,000	35,001
E	200,001 to 500,000	17,501
F	200,000 and below	5,001

Source: Reproduced with permission from Penang Economic Monthly

Now, here's where the interesting bit is. Malaysia is a country with a disproportionately high ratio of contractors. There are over 41,000 registered contractors with the MoF. *That's one registered contractor for every 292 working Malaysians*⁴:

- 94% of registered contractors are bumiputera;
- 75% of bumiputera contractors, and 70% of all contractors in total, are in the Class F category.

Unit Peneraju Agenda Bumiputra (Teraju), the lead national coordinator of the Bumiputera business agenda, says one in every five Bumiputera small and medium enterprises (SMEs) is a Class F contractor⁵.

⁴ Based on 41,116 registered contractors and a workforce of 12 million.

⁵ Teraju aims to end all Ali Baba practice. Malaysia Insider, 22 Aug 2011. Retrieved on 25 Nov 2011.

REFSA has pointed out that the Class F scheme to develop contractors is a national failure. Only 47 of nearly 29,000 F-Class contractors managed to upgrade to E and B Class⁶, said Minister of Works Dato' Shaziman Bin Abu Mansor in a written reply to YB Dr. Siti Mariah Binti Mahmud (PAS-Kota Raja) on 7 Apr 2011.

Or consider it from another perspective - the ability to handle large contracts. As shown in the chart below, more than half the non-bumiputera contractors are in the three highest categories. In fact:

- 22% or nearly 1 in 4 non-bumiputera contractors, are at Class A level;
- In contrast, 90% of bumiputera contractors are at Class D or below.

Figure 6: Most bumiputera contractors are tiny - 90% are Class D or below

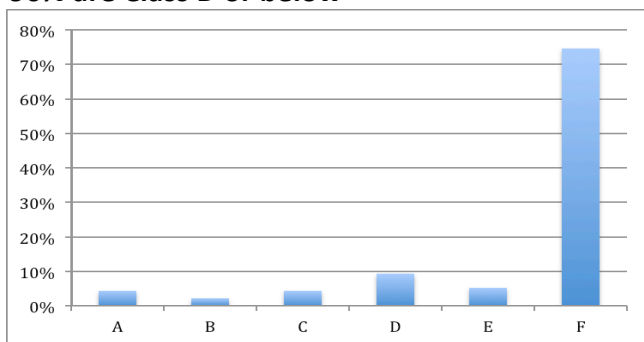


Chart shows % of bumiputera contractors in each category. Source: REFSA. Calculated from a written reply by the Minister of Works to YB Dr Siti Mariah (PAS - Kota Raja) on 2 Apr 2011.

Figure 7: Whereas more than 50% of non-bumiputera contractors are Class C and above

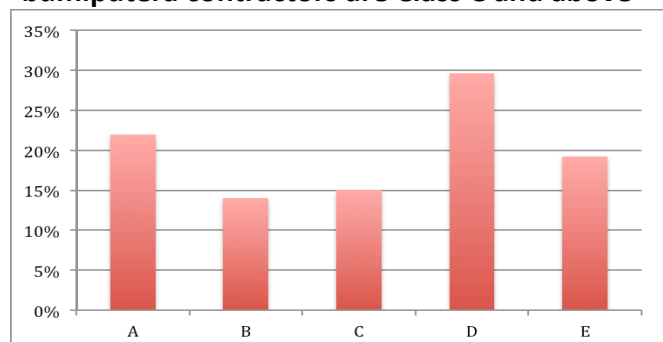


Chart shows % of non-bumi contractors in each category. Source: REFSA. Calculated from a written reply by the Minister of Works to YB Dr Siti Mariah (PAS - Kota Raja) on 2 Apr 2011.

Rather than developing skills and capabilities and higher Class bumiputera contractors, the Class F mechanism has been subverted to foster not only government-dependency, but also political-dependency.

Prime Minister Datuk Seri Najib Razak has said Malay contractors should continue to support Umno because “the fate of Umno and that of the Malay contractors is inseparable.” He admitted, “There is no incentive for Class F contractors to graduate to a higher category.” “I know it’s very comfortable being a Class F contractor. If there is a fiscal plan by the government they are sure to get a project, sometimes two or three even.”⁷

⁶ Only 0.2% Class F contractors managed to upgrade to a higher Class. Available at www.refsa.org/relevant-number/less-than-1-percent-class-f-contractors-upgraded/

⁷ PM tells Malay contractors fate tied to Umno. Malaysia Insider, 3 July 2010. Retrieved on 23 Nov 2011.

Open tenders + Class F = Effective affirmative action

When the Pakatan Rakyat coalition took over the Penang state government, procurement methods changed. With open tenders, Class F contractors submitted their bids through a transparent digital process that minimised human interaction. T

The letter of support from the Umno division head was no longer necessary. “In the old days,” said Tahir Jalaluddin Hussain, president of the Class F Contractors Association of Penang, “winning a government contract had nothing to do with how efficient or competitive you were. It was all about whom you knew and how well you knew them.”

Tahir, speaking to Penang Economic Monthly, agrees that the open tender system has encouraged greater productivity amongst Malay contractors. Even at the Class F level, open tenders have allowed the more industrious contractors to succeed on their own strengths and achieve their true potential.

Another positive outcome is the rehabilitation of the image of Class F contractors. Those who flourish in Penang do so not as cronies, but on their merits. Professional pride is replacing the once-negative image associated with Class F contractors.

More importantly, it has eliminated rent-seeking and patronage politics. “Previously,” alleges Tahir, “the road to a government contract was through the local Umno division head. There was no other way. And you had better be prepared to pay a commission. They don’t help you for free.”

“The biggest difference,” says Tahir confidently, “is that genuine Malay contractors are now getting contracts based on nothing else but their own capabilities.” And this is how it should be.

REFSA considers this the most important achievement of the open tender system in Penang. REFSA hopes that these contractors will continue to do well, grow and graduate from Class F levels, such that there will more bumiputra contractors at higher levels.

Fair access, increased competition and rewards to the capable – these are all the ingredients of a vibrant economy that will further contribute to Penang’s and Malaysia’s success.

Appendix: Open Tender - How it works in Penang

An open tender system is a purchasing process that requires all qualified suppliers to bid in a contest to offer the best price, service and quality.

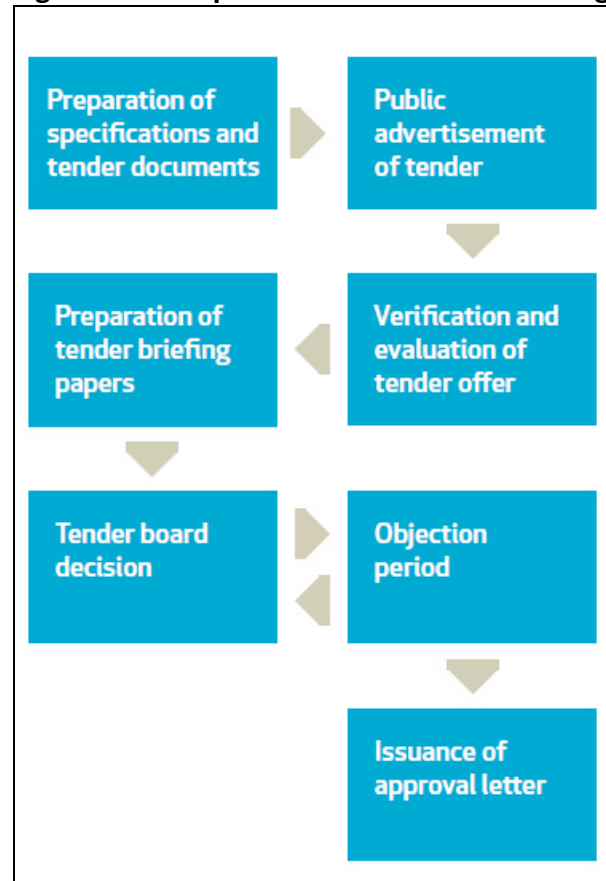
In Penang, works procurements, and supplies and services procurements costing less than RM20,000 and RM50,000 respectively are rotated among contractors through a balloting system. All larger procurements are awarded through a public and competitive bidding process as follows:

1. The procurement needs are advertised and published on each department's or agency's website, in addition to at least one local daily and the state government's e-Procurement portal;
2. All bids received are displayed in order that the number of bidders and quotations offered are public knowledge. The identities of the bidders are kept confidential;
3. After the tender closes, bids that are in order are presented to the Tender Board, or Quotations Committee for procurements below RM200,000⁸. Details of the winning bid including the identity of the bidder are published online. A two-week objection period is allowed before the approval letter is sent. If an objection is lodged during this period and found to have basis, then the process loops back to the Tender Board for reconsideration (Figure 1).

⁸ The Tender Board comprises the State Secretary, State Financial Officer, Director of Public Works and 1 or 2 officers from the relevant fields. The Quotations Committee comprises at least 3 persons. It is chaired by the Holder of the Allocation Warrant (Pemegang Waran Peruntukan) and includes officers appointed by the relevant Heads of Department or the State Financial Officer.

The system in Penang is of a competitive, transparent and public open tender process via the e-Procurement portal and a two-week objection period, and a direct line of payment to recipients that effectively bypasses opportunistic middlemen and “turnkey” contractors.

Figure 1: The Open Tender Process in Penang



Source: Reproduced with permission from Penang Economic Monthly

This practice restores market efficiency and resolves some of the problems of kickbacks, wastages and inflated prices associated with public procurement. It reduces irregularities and political partiality, two traits that are almost synonymous with public procurement in many nations, as well as maximises the use of taxpayers’ resources.

Acknowledgements

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