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Factors Contributing to Ethical Issues in Project Procurement

Planning: a case study in Malaysia

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Abstract: The construction industry plays a substantial role in a country's national economy, irrespective of the country's levels of economic development. The Malaysian Government has given a much needed boost to the country's construction projects under the 9th Malaysian Plan where a total of 880 projects worth RM15billion (US\$48billion) is to be tendered (The Star, 2006). However, Malaysia has not escaped the problems of project failure. In 2005, 17.3% of 417 Malaysian government contracts projects were considered "sick". Project procurement is one of the most important stages of project delivery. Even though ethics in project procurement has been identified as one of the contributors to project failure, it has not been systematically studied before from the perspective of client in Malaysia. The aim of this paper is to present an exploration to the ethical issues in project procurement in Malaysian public sector projects. By exploring ethical issues from client perspective, this could provide an ethical standpoint for the project life cycle and could maintain a good affiliation between the clients and the customers. It is expected that findings from this review will be somewhat representative of other developing countries.

Key words: project procurement, ethics, ethical issues, plan procurement

1. INTRODUCTION

The public sector has been playing an active role through the involvement in the execution and delivery of public projects to improve the quality of life of the citizens. However, there are many concerns that been shown for the difficulties in managing public sector projects due to human behaviours and the conflict that often takes place in projects. Malaysian public sectors have not escaped the problems of project failure. In 2005, 17.3% of 417 Malaysian government contract projects were considered "sick" (Malaysia Works of Ministry, 2005). Of these sick projects, some of them were caused by the ethical issues in project procurement. Governments around the world invest enormous amounts of money in project procurement especially in the construction industry (Government Extension to PMBoK, 2006). Of all the government activities, procurement is one of the most vulnerable to fraud, corruption and ethical issues (OECD, 2009). Due to the fact that governments around the world spend about USD 4 trillion each year on the procurement of goods and services, a minimum of USD 400 billion per year is lost due to bribery (Peter Eigen, transparency International, 2002 as cited in OECD, 2009).

According to Malaysia former Prime Minister, Datuk Seri Abdullah Ahmad Badawi, the existing procurement process and awarding of government contracts is full of opportunities for corruption (Berita Harian, 2007). Therefore it is important for the public sectors to identify the factors that contribute to the ethical issues in project procurement planning. This is to ensure that the ethical issues can be identified at the earlier stage to avoid from any opportunities of unethical behaviour to occur. In Malaysia, the National Development Policy (NDP) which has been

implemented since 1991 has many development projects in it. It is crucial to understand that a big programme such as NDP that consists of various gigantic projects must avoid from running into ethical issues in order to ensure that the projects are delivered with quality outcome.

The aim of this paper is to determine the factors that contribute to the ethical issues focusing on the plan procurement from the perspective of client. This paper will start with the background of ethics in project procurement followed by the factors contributing to ethical issues.

Public Procurement in Malaysia

In Malaysia, the importance of project procurement planning is supported and encouraged by project management experts and government departments (Ministry of Finance, Economic Planning Unit and Treasury Board). The Ministry of Finance (MOF) is responsible for all the procurement procedures both internally and outside of Malaysia. MOF has published guidelines that acted as the legal framework for procurement in Malaysian public sectors. The guidelines are; the Treasury Instructions (TI), Procurement Guidelines Book, the Financial Procedures Act 1957 and the Treasury Circular Letter (TCL). These guidelines cover the provisions for the purchase of services, consultants and also advisors in the areas of engineering, technical, financial, legal, architecture, design and others. All of these identified the types of procurement and the processes involved as the MOF's function was primarily in the areas of controlling, enforcement, supervision, reconciliation, usage, distribution and storage of procurement for government departments (Othman, et.al, 2010).

Even though there are guidelines and acts to guide the procurement process, there are still ethical issues that arise in project procurement that eventually leads to a lower quality outcome for the project. In Malaysia, a number of public sector projects are facing this problem; the headquarters of Malaysian External Trade Development Corporation; the delay in completion of school buildings; school computer labs; cracks in 31 pillars of Middle Road Ring Two (MRR2) projects; and the most recent is the collapsed roof of Sultan Mizan Zainal Abidin's Stadium in Terengganu (Boards of Architects Malaysia, 2008).

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These problems should be the responsibility of all parties involved in the project including the client as the project sponsor.

Morality is synonymous with ethical issues. According to Works Ministry of Malaysia, Y.B. Dato' Shaziman bin Abu Mansor (2009) in his speech during the opening of Construction Industry Integrity Seminar 2009, ethical issues will normally occur especially during the economic downturn. Those contractors and clients who are in the construction industry will try to get projects using whatever methods including unethical behaviour that ignores morality and integrity. This is because they are willing to do anything to survive during the economic downturn. Due to this unethical behaviour by the construction industry parties, there is a big impact on the quality of the project (Rahman *et.al.*, 2007). One of the key challenges of the construction industry in Malaysia is to focus on continuous quality improvement. However, with the ethical issues arises in project procurement, the quality of project performance has declined.

Donaldson (2001) stated that ethical practices that promote economic efficiency include respect for intellectual property, engaging in fairer competition, avoiding monopolies, avoiding nepotism and crony capitalism, not abusing government relationships, providing accurate information to the market, avoiding bribery, respect for the environment and honouring contracts, promises and other commitments. Ethical issues in project procurement are not only about bribery or corruption but also conflict of interests and collusive tendering. Transparency International (2005) has shown how corruption can add up to 25% to the cost of public contracting, generating waste of public resources, missed development opportunities, an unstable environment for businesses. This statistic indicates that the scale of corruption is higher in construction than any other sector of the economy.

The Malaysian government is very stern in improving these ethical issues and has taken a number of steps to improve the situation including establishing the Anti Corruption Agency and in January 2009, the establishment of Malaysian Anti Corruption Commission Act 2009 with 74 sections under it. This is to strengthen the enforcement in combating corruption in Malaysia. At the same time, the Construction Industry Development Board (CIDB) of Malaysia has launched the Construction Industry Master Plan (CIMP) in 2004. In the CIMP, one of the objectives is to enhance the supervisory and monitoring mechanism upon award of the tender. There is a need to put in place regular monitoring/auditing to ensure that projects are on-track and the expected quality is met. This objective is important to ensure that the ethical issues in project procurement can be avoided by having a transparent process. CIDB itself has principles of Code of Ethics that was established in 2008. This code encourages the member to be honest and exercise integrity in performing their responsibility, comply with laws and regulations, respect for individuals and society, must realize the importance of quality, skills and standard health, safety and environmental preservation.

Further, the former Prime Minister, Dato' Seri Abdullah Ahmad Badawi has launched the National Integrity Plan (NIP) and officiated the Integrity Institute of Malaysia (IIM) as a way to defeat integrity issues in Malaysia. The NIP highlights the preventive approach to overcoming corruption by inculcating in individuals and Malaysian society as a whole, the values of honesty, integrity and ethics. Overall, the NIP's objective is to establish a fully moral and ethical society whose citizens are strong in religious and spiritual values and permeate with the highest ethical standards (NIP, 2004). Nevertheless, to solve the ethical issues in the construction industry and its projects, CIDB and IIM have collaborated to develop a code of ethics for the contractors in Malaysia. IIM also has taken the initiative to organise conferences such as the World Ethics and

Integrity Forum in April 2005 and the Forum on the Construction Industry in September 2005. These conferences have given the opportunity to professional bodies, public and private sectors to have a round-table discussions and talks to share ideas and opinion concerning ethical issues and integrity.

According to the Ninth Malaysian Plan, 536 projects with the overall value of RM 20.12 (US\$6.3) billion have been approved. From this total, 103 projects have been completed, 199 projects are still in progress and 234 projects are still in planning process and have started in 2010. These projects are funded by the government, therefore it is important to ensure that the taxpayer money is used effectively and the projects are carried out according to the plan.

Ethical issues not only occur among the contractors and suppliers but also the client as well. The ethical issues in procurement practices have not really seriously considered the role of clients. This paper examines the ethical issues from the perspective of clients from the public sectors. From an extensive literature review, there are a few studies carried out looking at the role of clients including the government client in relation to ethical practices in the project procurement. Project implementation begins with the client, sponsor of the construction process, who provides the most important perspective on project performance and whose needs must be met by the project team (Masterman, 2002; Rowlinson & McDermott, 1999; Masterman, 1992; Newcombe, 1994).

Most of the previous research conducted concerns the ethical issues in the tendering or contract award phases of project procurement. However, it is also important to study the plan procurement or the pre-award phase of project procurement. This is because plan procurement is the key function that sets the stage for the procurement process. According to PMBoK (2008), plan procurement involves determining whether to acquire outside support, if so what to acquire, how to acquire it, how much is needed and when to acquire it. This process also includes consideration of potential sellers, mainly if the buyer wishes to implement some measure of influence or control over acquisition decisions. As a key project activity, the need for planning emerges to be underemphasized at the initial stages of procurement projects.

The scenario in Malaysia is that open competition based on equal admission in the procurement process is prevented by a clear affirmative action policy, that ensures opportunities for the Malay (Bumiputra) business community. This is exercised through set asides, preferential margins and quota restrictions (Jones, 2007). They also enjoy preferential margins up to 12 ½% for medium value and in some cases, high value tenders. (WTO, 1997; APEC, 2003). Therefore, government agencies are required to procure supplies and services from local sources as stipulated in the procurement policy. However, there are many ethical issues arises when this is being practiced as mentioned in the case example above such as corruption and conflict of interest.

2. ETHICS IN PROJECT PROCUREMENT

2.1 Project Procurement

Procurement can be defined as an amalgam of activities undertaken by a client in order to obtain a new building (Rowlinson *et. al.*, 2000). Office of Government and Commerce's (OCG) 2003 defined procurement as the means of achieving project objectives and value for money by taking into account the risks and constraints, leading to decisions about the funding mechanism and asset ownership for the project. Project procurement is one of the important areas in project management. It includes the broad management functions of planning, organizing and leadership, staffing, controlling and communicating

procurement processes and activities across the spectrum of the “upstream” supply chain activities of both public and private organizations. According to PMBoK (2004), project procurement includes all the processes necessary to purchase or acquire the products, services or results needed from outside the project team to perform the work. There are several phases in project procurement process as depicted in Figure 1.

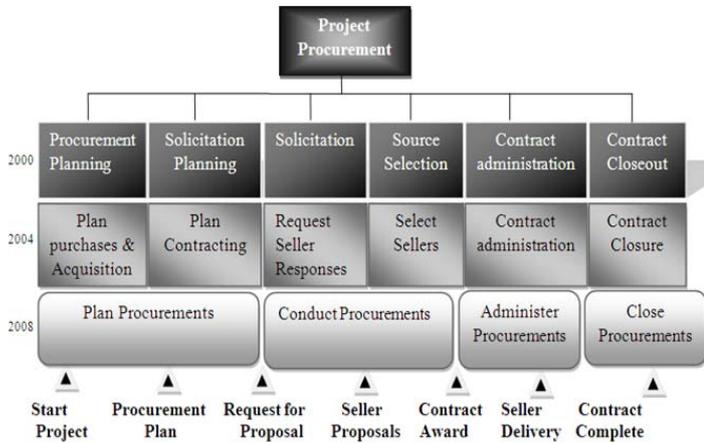


Figure 1: Project Procurement Phases cycle (Fleming, 2003 and Guth, 2009)

The decisions that are made in plan procurement will influence the project schedule and are integrated with developing the schedules in the future. According to PMBoK Government Extension (2006), government procurement decisions have many challenges to maintain public trust, fully utilised government resources and to ensure open and fair competition among prospective government contractors. Therefore, the first step is to have government procurement decisions made by government officials who are accountable to the public through procurement regulations, procedures, conflict of interest laws and other similar provisions (Government extension of PMBoK, 2006).

2.2 Ethical behaviour

Ethics in project management has been widely discussed and debated by practitioners and researchers and one of the areas that they focus on is project procurement. This area has been identified as one of the major areas in project management that has contributed to ethical issues during the implementation of projects. Based on an extensive literature review by other scholars, researchers and writers there has been a lack of focus on ethical issues in public sector project procurement particularly in the pre-stage of project procurement. Due to the huge amount of money and a large number of companies involved with the procurement process for big contracts, potential exists for unethical business practices in each of the steps in the procurement process.

Ethics is not only about behaviour but includes thoughts, language, reasoning, processes and judgement that informs the choices people make in their daily lives that affect their own well-being and that of others (Wasserman, 2000). It is not only about the way we behave, think or act. There are also other factors that affect the way we act either ethically or unethically that consequently influence the decision making as illustrated in Figure 2. Ethical behaviour is caused by internal i.e. organizational culture. There is a tremendous impact of organizational culture on the ethical behaviour of people within the organization and indirectly can manipulate the ethical

behaviour of people involved in the plan procurement. According to Bowen (2004), all of these dimensions had an effect on ethical decision making through factors such as the level of autonomy for communication in issue decision making, the relationship of the top communicator to the dominant coalition and how the moral analyses of individuals were communicated about in issues management meetings.

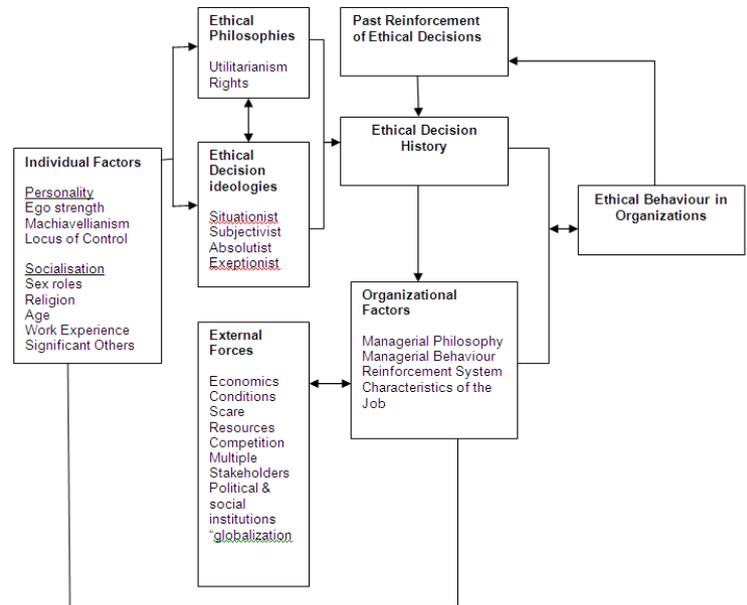


Figure 2: An integrated model for understanding ethical behaviour in business organizations (Stead et al., 1990)

Most of the business ethics literature reveals three personality variables that have a significant effect on ethical behavior: Type A/B Personality (Buckley, Wiese & Harvey, 1998a; Perry, Kane, Bernesser & Spicker, 1990), locus of control (Hegarty & Sims, 1978; Trevino, 1986; Trevino & Youngblood, 1990), and Machiavellianism (Christie & Geis, 1970; Hegarty & Sims, 1978, 1979; Hunt & Chonko, 1984). Locus of control also is another personality that needs to be identified. The causes to which individuals attribute their successes and failures are often referred to this term. An individual who has external focus of control believe that ethical issues are beyond their control and for those who have internal focus of control believe that they control the things around them and are willing to take responsibility for their behaviour (Forte, 2004; Trevino, 1986).

Besides personality, position or status will also affect the ethical decision making. This is due to the amount of responsibility and power held by an individual. Demographics have been used to predict moral reasoning in a number of studies. Demographics include age, gender, education level and background. Some variables are also related to the confidence and personal beliefs of the individual decision maker. Ego strength is related to strength of conviction or self-regulatory skills (McDevitt et al., 2006).

According to Guth (2009), linking to the project procurement processes, there a few of ethical issues that can occur here:

- issues of influence – behaviours or actions that may negatively influence or appear to influence, procurement decisions (such as seller gifts, entertainment or outright bribes)
- perceived impropriety – the intent and appearance of unethical or compromising conduct in relationships, actions and communications

- conflict of interest – personal, business or other activities that conflict with the lawful interests of the employer
- confidential and propriety information – violations of confidentiality, non-disclosure and proprietary rights
- reciprocity – improper reciprocal agreements
- applicable laws, regulations and trade agreements – violations of Law

A conflict of interest exists when an individual has the opportunity to take a decision which advances his or her own interest rather than that of the organization (Walker, *et al.*, 2008). However, bribes, gifts, personal payments have different meaning in different countries. In western countries, all of these are considered a potential conflict of interest. On the other hand, in China, there is a term called “guanxi” whereby this is to establish rapport and trust with business partners that is considered different to bribery. In Chinese culture, gift giving is a natural dynamic of any relationship. It shows that a relationship is valued and is a means of expressing respect and honour for the other person (Tian, 2007). Honesty and fairness is needed in business ethics and so with project procurement.

In Malaysia, bribery and corruption are considered unethical behaviour and those who are caught giving or accepting bribes will be penalised under the Malaysian Anti Corruption Act 2009. Under this act, those who are caught in these activities will be penalised with maximum 20 years imprisonment and fine of five (5) times the value of the gratification or RM10,000 (USD 3, 125) whichever is higher. was carried out in one of the municipal Council in Alor Gajah, Melaka, Malaysia. The Anti-Corruption agency (ACA) had arrested an engineer with the Alor Gajah Municipal Council and a contractor for alleged graft involving RM47,100 (AUD\$ 15,700) (The Star, 2008). These are examples of ethical behaviour occurred in public sectors that involved corruption and conflict of interest. All these must be overcome to avoid from the projects getting worse.

2.3 Factors contributing to ethical issues in Project Procurement

There are many factors that cause people to be involved in ethical issues in project procurement. In Malaysia, research has been carried out to show the effect of unethical behaviour to the construction quality (Rahman *et al.*, 2007). This research identifies several instances of unethical misconduct (Table 1). Most of these unethical conducts are in the project procurement process. 74.2% of the respondents gave the same feedback regarding the Malaysian construction industry whereby this industry is tainted with unethical conducts among the construction players, including the public sectors as the main clients of construction industry.

Rank	Unethical Conducts
1	Under bidding, Bid Shopping, Bid Cutting
2	Bribery, Corruption
3	Negligence
4	Front loading, Claims game
5	Payment Game
6	Unfair & dishonest conduct, Fraud
7	Collusion
8	Conflict of Interest
9	Change order game
10	Cover pricing, withdrawal of tender
11	Compensation of tendering cost

Table 1: Ranking of unethical conducts by construction players in Malaysia (Rahman *et.al.* 2007)

It is important to understand and investigate the factors that contribute to these unethical conducts. When the reasons are known only then can the right methods be developed to curb these problems. Below are the factors that contribute to unethical behaviour in project procurement:

i) **Economic downturn**

During the economy recession, most industries faced financial difficulties – this was especially true of the construction industry. These companies are willing to do anything in order to survive during the recession especially to get a tender or projects from the public sectors (Works Ministry, 2009). This open up the opportunity for bribes and corruption to occur. Research conducted by Rahman *et. al.* (2007) parallel with foreign research conducted by FMI (2006) which revealed that 63% of respondents agree that construction industry is tainted by unethical acts among construction players including the public sectors. A case had happened in Giat MARA centre, Kuala Lumpur, Malaysia that involved a lecturer at this centre. In this case, the lecturer was arrested by Anti-Corruption agency (ACA) after he was alleged to have awarded his wife’s company a tender. The man was accused of abusing his position as a quotation analysis officer by taking part in a contractor/supplier/wholesaler central committee meeting for awarding of the tender (NST, 2008). One of the main reasons of this is happening is due to personal financial needs (Rahman *et. al.*, 2007).

ii) **National Objectives**

Malaysia has many national policies and objectives that need to be achieved by 2020 in order to be a developed country. there are many mega projects under the Ninth Malaysian Plan (9MP, 2006-2010) to ensure that the national objectives are achieved. The construction industry contributes major to the Malaysian economy. Projects under the 9MP gave positive impact to the country’s main sectors particularly the construction and trade as well as Domestic demand (CIDB, 2008). According to Public Works Department (2007), there are ten mega projects with a value of billions of ringgit that need to be completed. Federal government development expenditure increased to RM40.6 billion (USD\$12.7 billion) due to the funding of building and improvements to infrastructure such as schools, hospitals and government living quarters.

Under the 9MP, there is also a road development concept called “The conceptual regional highway configuration plan for Peninsular Malaysia” that needs to be completed by 2020 by Works Ministry. All these projects must be completed by 2020 to ensure that Malaysia becomes a developed country by that year. All these have caused pressure to the construction players including the public sectors. This also has caused ethical issues in project procurement as there are many contractors who wanted to get the tender by giving bribes to the people in the procurement process especially. A good deal of corruption also involves cronyism and nepotism. As a result, contracts go to companies in which powerful political figures and senior bureaucrats or their associates, friends and family members have a major ownership or financial stake (Jones, 2002). In 2004, there was a case involving a small network of contactors known as Project Management Consultants, with crony links with Malaysian senior officials and government leaders, won a high number of profitable government contracts for civil engineering consultancies without a competitive tender (Siraj and Sunita, 2006).

iii) Leadership

More than half of the respondents of the research conducted by Rahman et. al. (2007) felt that leadership is needed as role model to improve the professionalism. Leaders must show a good leadership style as they are the role model of their employees. Their conduct or behaviour will influence the organization's norms and values. The people within the organization will normally follow the norms that are being practiced within that organization (Gupta & Sulaiman, 1999; Zabid & Alsagof, 1993). The behaviour of the top management and the immediate superior is a guidepost for acceptability of ethical or unethical behaviour in an organization. They are the role model of their staff to show the integrity is well implemented in the organization. Therefore, the Integrity Institute of Malaysia (IIM) was established in 2004 to inculcate ethical values and behaviour among the public and private sectors. They also organised conferences and campaigns to raise the public awareness of the unethical behaviour not only among the public but the most important thing is to the top management of the organization itself.

iv) Non transparent selection process

One of the main reasons that ethical issues occur in plan procurement is due to the non-transparent selection process. For example, concession agreements and government procurement lead to sub-optimal outcomes (Beh, 2007). This has led to allegations of corruption whereby the Public Works Department of Malaysia is under siege for the multi-billion ringgit fiascos involving MRR2, the Matrade Building and the Navy recruit training Centre (Beh, 2007). Today, the Matrade projects have not yet been completed and the MRR2 project is facing a problem with the cracks that were found at the piling. Thus, it is important for plan procurement to be transparent to avoid from having problem with the project implementation.

Currently, it is crucial that the issue of transparency and accountability to be focus on especially when it comes to public expenditure. Problems of accountability arise when governments ignore ethics and constitutional and legal provisions in conducting public money and affairs. This also includes the disregard of the administrative systems, tasks that are complex until it is difficult to identify who is responsible for what, activities are underfunded. When the problems of accountability occur, thus there are many potential of unethical behaviour to occur that will influence the ethical decision making in plan procurement. Failure to control the bidding exercise is also causing unethical behaviour. It will end up with under bidding by contractors and this will affect the project implementation and project delivery to the end user (Rahman et. al., 2007). It is important to control the bidding exercises to ensure that the public sectors are getting the most qualified contractor to perform the project based on the specific requirements. If this is not controlled it may cause the low project quality or even worse the project could not be completed within the stipulated time frame due to the bidding exercises that are not controlled by a specific body or department.

Mullins (2003) has argued that procurement planning is the process of determining the procurement needs of an entity and the timing of their acquisition and their funding such that the entities operations are met as required in an efficient way. But if there are ethical issues in the plan procurement, it is difficult to meet all the requirements and objective of project procurement – this could cause high risk to the project completion. Plan procurement process public sectors needs to be transparent to be able to answer the following questions to avoid any ethical issues arising;

- which procurement systems are the ministry adopting, how can the ministry be more efficient in the procurement process to avoid from ethical issues to occur
- who are the people that will be involved in the plan procurement and
- how do the public sectors make the plan procurement process transparent so that ethical issues can be evaded ?

These questions will Procufacilitate the public sector in overcoming ethical issues in the procurement process. Any ethical issues and ethical behaviour should be solved in the procurement planning itself. In the public sector, as the expenders of public funds, it is important to operate the project procurement on rigid guidelines. Doing what is honest, forthright and in the best interest of the organization and public is normally included in the guidelines or the code of ethics. Unfortunately, public sectors do not always operate within these parameters and when these boundaries of code of ethics are crossed, there is tremendous public scrutiny.

v) Ineffective evaluation of the process

The importance of accountability has become an important agenda especially to the public sectors. This mechanism of accountability is indispensable for promoting a high standard of ethical conduct in order to move towards a developed nation (Beh, 2007). Public projects in Malaysia should be more closely evaluated to ensure that the public expenditure is used wisely for the projects as in the Ninth Malaysian Plan (9MP, 2006-2010). Thus, the Public Accounts Committee needs to have a balanced composition to act in non-partisan manner on public expenditure issues. The open tender process is one of the ways to mitigate the possible conflicts of interest and to promote cost-efficiency in project procurement. Currently, all public sectors have been directed to comply with the current procurement policies with the improvement of the open tender system. This is to ensure the transparency and accountability in the project procurement among the public sectors.

vi) Ineffectiveness of professional ethics and policy in procurement

Each professional body or organization has its own professional code of conducts and policies to guide the ethical behaviour among the members. However, failure on the part of professional personnel to exercise the degree of care considered reasonable under the circumstances can cause ethical issues to occur in project procurement. This is because most of the codes of ethics do not address the specific kinds of situations that professionals encounter (Loo, 2002). Even though Malaysian public sectors have many policies to guide the unethical behaviour, it is not being enforced properly. Accountability mechanisms need to be strengthened to address the irregularity in project procurement and greater demands have been placed on the public sectors for improving the project procurement process to be more transparent. According to London and Everingham (2006), although codes may seem to work in theory, they don't necessarily work in practice and perhaps this is one of the perennial dilemmas of the construction industry including procurement. The achievement of the implementation of the code of ethics in business also has been found only partial success (Loo, 2002; Allen & Davis, 1993). In Malaysia, even though 70% of Malaysian managers knew the existence of formal written codes of ethics in their organization, however, a large percentage of them are not familiar or "do not know" the existence of the written code of ethics (Gupta and Sulaiman, 1996). Codes of ethics are also not enforced in a proper and consistent manner in the Malaysian context leading to low degree

of seriousness of implementation (Gupta and Sulaiman, 1996). To overcome the ethical issues in procurement, an organization should not only have a professional code of conducts but also to enforce and willingness of the whole organization to commit to the code of ethics (Karande *et. al.*, 2000). When there is no awareness and commitment among the people within the organization, therefore the ethical issues could not be overcome.

3. CONCLUSIONS

The pre-stage of project procurement is an important stage of project procurement management. It will determine the success or failure of the project implementation. However, if there

are ethical issues occur during this stage, it could cause problem to the next phase of the project procurement management. It will affect the way that particular project is carried out. This also will cause difficulty in meeting the requirements and objectives of project procurement which could consequently cause high risk to the project completion. Before any solutions or models are developed to overcome these problems, we need to understand the factors that cause these ethical issues to happen. This is because ethical issues do not only involve the individual behavior but also the organization as whole and also external factors such as government policies, economy, politics and social as well.

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