

Impact of the new nacc reporting requirement on the private sector

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A new notification from the National Anti-Corruption Commission (NACC) is expected to have a significant effect on companies that do business with the Thai government.

On Aug 11, the NACC issued the notification entitled "Rules and Procedures Concerning the Preparation and Disclosure of Revenue and Expense Accounts of Projects for Which Individuals or Juristic Entities Are Contractual Parties with Government Agencies".

Starting from next Jan 1, private-sector entities entering into procurement contracts with government agencies will be required to prepare and electronically submit revenue and expense accounts to the Revenue Department each year along with their corporate income tax returns (for juristic entities) or personal income tax returns (for individuals).

The notification will significantly affect private entities entering into government procurement contracts, including individuals, Thai companies and foreign firms with a local presence. The definition of "government agency" is quite broad and includes majority state-owned enterprises such as Krung Thai Bank and PTT.

Importantly, the threshold for reporting is quite low _ all government procurement contracts worth 500,000 baht or more will be subject to the disclosure requirement. Businesses and individuals will also be required to submit one revenue and expense account for each contract and keep supporting documents for at least five years.

However, in the event of an investigation into incorrect disclosures or corrupt activities, supporting documents must be kept until the investigation is completed.

The notification further requires government agencies to set a condition that businesses and individuals entering into procurement contracts must receive and make payment via a current account except for payments not exceeding 30,000 baht, which may be made in cash.

Government contracts executed before next year will not be subject to this new disclosure requirement. However, if any material amendments are made to such contracts on or after next Jan 1, then they will become subject to the disclosure requirement.

If full payment under a contract is completed within a single accounting period (for juristic entities) or tax year (for individuals), then the revenue and expense accounts shall be filed for that accounting period or tax year.

If full payment under a contract is not completed within a single accounting period or tax year (for individuals), the revenue and expense accounts consisting of revenue and expenses arising in each accounting period shall be filed for that accounting period.

The reporting requirement will start from the date the contracts are executed and continue until the completion of obligations _ meaning that businesses and individuals will still be required to report their revenue and expense accounts for the project during the warranty period.

Although failure to comply with the new disclosure requirement does not entail criminal penalties, the sanctions imposed under the notification will be commercially severe. Violators will be disqualified from entering into new procurement contracts with government agencies.

In addition, failure to comply with the reporting requirement or incorrect reporting could result in scrutiny by the NACC, the Revenue Department or other relevant government agency.

Aimed at curbing corruption, the revenue and expense reporting form Bor Chor 1 requires businesses and individuals entering into government procurement contracts to provide detailed information on each procurement contract including the cost of sales or expenses, manufacturing costs and selling and administrative expenses (which cover certain costs such as personnel, utilities and directors' remuneration not specifically incurred under any particular contract). At this stage, it remains unclear whether and how these expenses will have to be allocated to each government procurement contract for the purpose of reporting revenue and expense accounts.

The new reporting requirement will place a substantial burden upon the private sector, as it will require a separate detailed report for each contract, and the minimum contract value subject to the reporting requirement is set at only 500,000 baht. (The NACC has explained that this threshold was set in accordance with the existing requirement that government agencies are required to report contracts worth 500,000 baht or more to the Comptroller-General's Department.)

Given that a business may enter into hundreds or thousands of contracts with government agencies each year, one can see the considerable impact this new requirement for additional reporting will have on the private sector.

The new measure will increase operating costs in terms of preparing revenue and expense accounts, while businesses and individuals will be obliged to take such additional expenses into account when bidding for or entering into procurement contracts.

On the other hand, those not wishing to be involved with complicated reporting may refrain from bidding or entering into government procurement contracts, which could effectively limit competition.

The new requirement could also divert regulators' attention from larger cases of corruption, as the NACC and the Revenue Department will be flooded with information due to the relatively low value of contract threshold. Thus, it remains to be seen whether this new measure will be effective in addressing major corruption in Thailand.