Public Procurement World - Singapore

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# 1. The Laws

## a. What is the applicable legislation?

The laws governing public sector procurement are primarily set out in the Government Procurement Act (Cap. 120) ("GPA") and subsidiary legislation promulgated thereunder, namely the Government Procurement Regulations ("GP Regulations"), the Government Procurement (Challenge Proceedings) Regulations ("Challenge Proceedings Regulations"), the Government Procurement (Application) Order ("Application Order") and the Government Procurement Act (Commencement) Notification.

Detailed and comprehensive guidelines on the conduct of government procurement are set out in a section of the Instruction Manual issued by the Ministry of Finance to all public sector officers ("IM on Procurement") which is not publicly available.

## b. Does the legislation relate to or interact with any applicable trade agreement, such as the European Union procurement rules, WTO Government Procurement Agreement (GPA) or the procurement requirements of the North American Free Trade Agreement (“NAFTA”)?

The GPA is intended to give effect to Singapore's obligations under international treaties, in particular the plurilateral 1994 Agreement on Government Procurement established under the auspices of the World Trade Organisation ("1994 Agreement").

Obligations on government procurement can also be found in various bilateral and multilateral treaties that Singapore has entered into, including the Agreement between New Zealand and Singapore on a Closer Economic Partnership ("ANZSCEP"), the Agreement between Japan and Singapore for a New Age Economic Partnership ("JSEPA"), the EFTA-Singapore Free Trade Agreement ("ESFTA"), the Singapore-Australia Free Trade Agreement ("SAFTA") and the United States-Singapore Free Trade Agreement ("USSFTA").

## c. What are the basic underlying principles of the legal framework?

The framework for public sector procurement enshrines the Singapore government's commitment to the following principles:

openness and fairness – suppliers should be given equal access to opportunities and compete on a level playing field in order to ensure that the best offers possible are received.

transparency – all stages of the procurement lifecycle should be open and transparent and the objectives, criteria and procedures associated with the procurement should, as far as possible, be made known to suppliers.

value for money – the selected supplier should offer the best value for money (i.e., the optimal balance of benefits measured against the total cost of ownership); the tender does not need to be awarded to the lowest bidder.

## d. Is aerospace and defense procurement treated differently from other types of procurement?

The GPA applies in respect of procurement by the Ministry of Defence, but only in relation to certain categories of goods listed in the Fifth Schedule of the Application Order. The list is mainly comprised of generic goods or goods of a non-sensitive nature (e.g., motor vehicles, engine accessories, furniture, office supplies, clothing, personal equipment, and toiletries).

This implies that the procurement of other goods by the Ministry of Defence, such as the purchase of major military equipment, weapons, arms and munitions, is excluded from the ambit of the GPA. This is in line with the exception set out in paragraph 1 of Article XXIII of the 1994 Agreement in relation to "the procurement of arms, ammunition or war materials, or to procurement indispensable for national security or for national defence purposes".

In a similar vein, the GPA does not apply to procurement undertaken by certain agencies under the Ministry of Home Affairs (e.g., the Criminal Investigation Department of the Singapore Police Force) or to procurement undertaken by the Ministry of Home Affairs that has security implications.

# 2. Application of the Statutory Procurement Laws

## a. Which public agencies are covered by the laws?

The GPA applies to public sector agencies that are listed in the Second Schedule of the Application Order ("contracting authorities"). Most Ministries, organs of state, statutory boards and other quasi-governmental organisations are included in the list.

In addition to the Ministries, the contracting authorities listed under the Second Schedule of the Application Order include (but is not limited to):

Agency for Science, Technology and Research

Board of Architects

Building and Construction Authority

Civil Aviation Authority of Singapore

Economic Development Board

Housing and Development Board

Info-communications Development Authority of Singapore

Inland Revenue Authority of Singapore

International Enterprise Singapore Board

Jurong Town Corporation

Land Transport Authority of Singapore

Maritime and Port Authority of Singapore

Media Development Authority of Singapore

Monetary Authority of Singapore

Nanyang Technological University

National Parks Board

National University of Singapore

Preservation of Monuments Board

Professional Engineers Board

Public Transport Council

Sentosa Development Corporation

Singapore Tourism Board

Standards, Productivity and Innovation Board

Urban Redevelopment Authority

As a city-state, Singapore does not have local government or sub-central governmental authorities. The bulk of government procurement activities is decentralised to individual contracting authorities, to be carried out under the framework discussed in this chapter. However, in order to reap economies of scale, certain agencies may call tenders for bulk purchases or practice demand aggregation on behalf of the entire Singapore government in the procurement of common goods and services. For example, the Infocomm Media Development Authority of Singapore is often appointed to source for suppliers to provide IT security services, network infrastructure or other IT or communications services on behalf of other government agencies.

## b. Which private entities are covered by the laws?

The GPA does not apply to private sector entities.

## c. Are co-operations between contracting authorities exempted from public procurement law? If so, what are the conditions for the exemption?

There are no specific exemptions under the GPA. Instead, the GPA does not apply to certain excluded procurements. For example, Paragraph 5(1) of the Application Order provides that a procurement made by a contracting authority on behalf of an entity which is not a contracting authority is not a procurement subject to the GPA. Such an "entity" includes a department of the Government or of a statutory body. As such, it is possible that co-operations between public bodies may not be subject to the GPA, in particular where a procurement by the contracting authority is made on behalf of an entity which is not a contracting authority.

Furthermore, a contracting authority has the power to exclude a procurement, or an act or measure in relation to a procurement, from the application of all or any regulations made under section 6 of the GPA if any of the following applies:

such exclusion is necessary for reasons of national security;

such exclusion is necessary to protect public morals, order or safety, human, animal or plant life, or any intellectual property right of the Government or any other party;

the contract of procurement is or is intended to be awarded to an institution assisting handicapped persons, a non-profit organisation or a penal institution; or

the procurement concerned is a procurement of one or more of the services set out in the Third Schedule of the Application Order, and such exclusion is consistent with the terms, conditions, limitations and qualifications set out in Singapore's Schedule of Commitments under the General Agreement on Trade in Services; or (ii) the exemptions set out in Singapore's List of Article II Exemptions under the General Agreement on Trade in Services.

## d. Which types of contracts are covered?

The GPA applies to the procurement of goods and certain types of services listed in the Third and Fourth Schedules of the Application Order (or a combination thereof) by all contracting authorities, other than the Ministry of Defence.

Although the Ministry of Defence is a contracting authority, as noted in Section 1(d) above, the GPA only applies in respect of the procurement of certain goods by the Ministry.

There is also a requirement that the value of the contract in question exceeds a certain threshold.

## e. How are changes to an existing contract dealt with? Do changes require a new procurement procedure?

According to "A Guide for Suppliers - Participating in Singapore Government Procurement Opportunities" published by the Ministry of Finance (the "**Supplier Guide**"), examples of common contractual terms and conditions include contract options such as possible extensions of the contract duration as well as transition to new suppliers. As such, changes to an existing contract will typically be managed based on a contractual basis.

## f. What is the applicable regime for framework agreements?

The Supplier Guide provides that framework agreements are used when there are certain items in the contract that may be subject to price fluctuation. When necessary, contracting authorities would obtain quotations through Request for Quotations from all capable contracted suppliers and award to the selected supplier after evaluating the bids.

The Supplier Guide also envisages that contracting authorities may combine purchases of common goods and services to yield better value for money through economies of scale by establishing a Demand Aggregation contract ("**DA contract**"). These contracts may be called by a contracting authority for its own use or on behalf of other contracting authorities, and are usually established through an open tender or quotation process. After evaluating the bids received, the procuring contracting authority may appoint one or multiple suppliers to provide the goods or services. Once the DA contract has been established, the participating contracting authorities in the DA exercise can then procure directly from the appointed supplier(s) when the product or service is required during the contractual period.

## g. What is the applicable regime for public-private partnerships (PPPs)?

The procurement regime set out above applies to PPPs. Further, the Ministry of Finance is responsible for formulating PPP guidelines and policies, and has issued a PPP handbook which provides guidance on (among other things) the PPP procurement process and management of a PPP relationship (the "**PPP Handbook**").

In particular, the PPP Handbook sets out certain procedures for the PPP procurement process. According to the PPP Handbook, the PPP procurement process will involve the following steps:

invitation for expressions of interests;

prequalification of bidders;

request for proposal from selected bidders;

market feedback period;

issue of final tender;

closing of tender; and

contract award / financial close.

The Ministry of Finance has also indicated, by way of response to FAQs on its website, that PPP is one of the possible approaches for new development projects that are estimated at more than S$50 million although projects below S$50 million can also be considered for PPP, depending on the nature of the project and the ability of PPP to deliver value for money for it.

## h. How are concessions dealt with?

The procurement regime set out above applies to the grant of concessions.

## i. Are there anti-avoidance rules (including laws on bid rigging)?

Yes. The GP Regulations set out certain rules that contracting authorities are required to comply with in undertaking procurement exercises, and contracting authorities are not allowed to prepare technical specifications or use the qualification procedure in such a manner as to avoid the application of such rules. Further, where a contracting authority undertakes a procurement through an agent (who is not a contracting authority), the contracting authority is required to ensure that the agent abides by the principles of national treatment and non-discrimination.

Where suppliers are concerned, section 34 of the Competition Act seeks to prohibit agreements, decisions or concerted practices between suppliers which are intended to or have the effect of preventing, restricting or distorting competition within Singapore. Such agreements should have an appreciable effect in respect of the prevention, restriction or distortion of competition, but bid rigging and other types of collusive conduct during the tender process will always have an appreciable adverse effect.

# 3. Procurement Procedures

## a. What procurement procedures can be followed?

Based on the estimated value of procurement, public sector agencies may choose varying procurement approaches. Based on the Supplier Guide, where the estimated procurement value exceeds S$5,000 but is below S$70,000, public sector agencies will issue quotations, and use a tender process where the estimated procurement value exceeds S$70,000.

The tendering procedure can be either open, selective or limited. Under the GP Regulations, contracting authorities are generally required to use the open procedure (all interested suppliers may submit a tender) or the selective procedure (only suppliers invited to submit a tender may do so) in undertaking a procurement exercise.

The open procedure typically comprises four stages: (i) inviting offers from the public; (ii) submission and receipt of offers; (iii) verification, evaluation and recommendation of offer; and (iv) approval and award.

Under the selective procedure, only suppliers invited to do so by the contracting authority may submit an offer. This method is usually adopted in relation to complex public sector projects which require suppliers with sophisticated and high-level know-how, capabilities and experiences. Thus, where a selective tender is carried out, a qualification of interested suppliers has to be carried out. Once suppliers are qualified based on their capabilities, the tender will generally follow the process set out in relation to the open procedure.

Contracting authorities are only allowed to use a limited tendering procedure (whereby no tender is called or suppliers are invited individually to submit a tender) in certain circumstances. This is covered in greater detail in Section 7(a) below.

## b. What status do electronic means/procedures have?

Except for certain limited exclusions, the GP Regulations apply to any procurement by a contracting authority, whether or not the procurement is conducted exclusively or partially by electronic means. In this regard, the GP Regulations provide certain rules regarding procurement by electronic means.

Regulation 10 of the GP Regulations provides that for each procurement, a contracting authority shall publish a notice of intended procurement on the GeBIZ platform or in the Government Gazette. There are also certain requirements applicable to electronic auctions.

In practice, tenders and bids are generally submitted on the GeBIZ platform. To participate in government procurement opportunities like invitations-to-quotes ("Quotations") and invitation-to-tenders ("Tenders") posted on GeBIZ, suppliers are generally required to register as a GeBIZ Trading Partner on the GeBIZ platform.

## c. Where are contract notices, i.e. calls for bid, published?

Regulation 10 of the GP Regulations provides that for each procurement, a contracting authority shall publish a notice of intended procurement on the GeBIZ platform or in the Government Gazette. In this respect, current business opportunities, like Tenders and Quotations, can be found on the GeBIZ platform (accessible at <https://www.gebiz.gov.sg>).

Additionally, the "Listing of Indicative Government Procurement Opportunities" shows the potential procurements which the public sector is likely to conduct in the year ahead (accessible at <http://app.mof.gov.sg/mfeupdate/index.asp>). These are provided for general information and are not invitations to tender.

## c. Can certain prospective bidders be excluded from the competition?

Yes, certain prospective bidders may be excluded if a selective tender procedure is utilised. As mentioned in Section 3(a) above, this process envisages that suppliers will need to be qualified before they are invited to respond to the tender.

Please note however that even if an open tender procedure is used, it is possible for contracting authorities to invoke a two-stage tendering process whereby only tenderers shortlisted in accordance with the evaluation criteria set out in the tender may proceed to the second stage of tendering.

It is also possible to exclude all prospective bidders but one if the relevant contracting authority is entitled to employ the limited tendering procedure (see Section 7(a) below).

Finally, certain prospective bidders may be excluded on the basis that they have been disbarred from participating in government procurement exercises by the Standing Committee on Debarment. There are various grounds for debarment, but these typically revolve around some form of default or contravention of government contracts or tendering procedures by the supplier (e.g., contract terminated for breach, withdrawal of tenders prior to award). In general, the period of debarment is commensurate with the financial or material losses suffered by the government agency and the need to protect other government agencies from the defaulting supplier.

# 4. Bidder Selection

## a. Are there any rules on the selection criteria?

The principles of transparency, open and fair competition, and value for money underpin the Singapore Government's procurement policies.

Additionally, Quotation and Tender documents typically contain descriptions of the goods and services to be provided and the criteria to be met. Under Regulation 19 of the GP Regulations, information required to be provided in a tender notice or its documentation shall include all evaluation criteria the contracting authority will apply in the awarding of the contract, and, except where price is the sole criterion, the relative importance of such criteria. As such, evaluations of bids are based strictly on the criteria indicated in the Tender document to ensure fairness and transparency.

The Supplier Guide further states that contracting authorities typically have two sets of criteria:

Critical Criteria: these criteria must be met in order for the bid to be considered for award; and

Criteria not defined as Critical Criteria: suppliers who do not meet these criteria will still be considered, but may be disadvantaged against another supplier that meets the criteria.

## b. Is prequalification an option? If so, what are the requirements? What is the procedure?

Agencies may require suppliers to have professional qualifications or accreditations to ensure that the products or services delivered conform to industry standards.

## d. Do “blacklists” for bidders exist? If so, what are the conditions for unlisting?

Regulation 13(4) of the GP Regulations provides that a contracting authority may exclude a supplier from participation in a procurement, or treat the supplier as ineligible to tender for the procurement, or refuse to short‑list the supplier for the procurement, on any of the following grounds:

the supplier, being an individual, is bankrupt or has made any composition or arrangement for the benefit of his creditors;

the supplier, being a company, has passed a resolution or is the subject of an order by a court for the company's winding up otherwise than for the purposes of bona fide reconstruction or amalgamation, or has had a receiver, manager or administrator on behalf of a creditor appointed in respect of the company's business or any part thereof;

the supplier has furnished any false information or document to the contracting authority;

the supplier has committed significant or persistent breaches in the performance of any substantive requirement or obligation under any contract with any contracting authority;

the supplier has been convicted of any offence involving fraud, dishonesty or moral turpitude;

the supplier has committed professional misconduct or acts or omissions that adversely reflect on the commercial integrity of the supplier;

the supplier has failed to pay taxes under any written law; and

any other ground for the debarment of suppliers published in the Government Gazette or on the GeBIZ Platform.

Regarding grounds of debarment, the Supplier Guide provides that suppliers may be debarred from being awarded future Government contracts (for a period of time) if they have infringed any of the following debarment grounds:

abandonment/ termination of contract

withdrawal of tenders before award

withdrawal of tender after award

use of sub-standard materials and short supply/ cheating/ attempted cheating

giving false information

corruption

poor performance reports

unauthorised sub-contracting

novation of contract

defaulting repeatedly

violation of safety regulations or safety requirements or debarment by MOM for poor safety record

compromise of national security or public interest

bid-rigging

Further, the Supplier Guide states that an agency will submit the debarment recommendation of a company (or an employee of a defaulting company) to the Standing Committee on Debarment for approval. If the recommendation is approved, the company or employee will be informed of the outcome, including the reason for debarment. These companies or individuals will be barred from participating in all government tenders listed in GeBIZ for a period of time, ranging from one to five years, depending on the severity of the default.

## e. Does the involvement of a company in the set-up of a procurement procedure exclude the company from said procedure due to conflict of interest?

A contracting authority is required under Regulation 7 of the GP Regulations to conduct procurement in a transparent and impartial manner that is consistent with the GP Regulations, avoids conflicts of interest and prevents corrupt practices. Whether there is a conflict of interest will depend on the circumstances of each case.

## f. Can bidders combine to submit a bid (bidder consortia)? What limitations apply?

There are no mandatory rules in respect of combined bids from two or more bidders. We note that the terms and conditions governing most public sector tenders allow for submissions by a consortium.

Nonetheless, note that in general but subject to certain exemptions, the Competition Act prohibits all agreements between undertakings, decisions by associations of undertakings or concerted practices which have as their object or effect the prevention, restriction or distortion of competition within Singapore. Whether these anti-trust rules operate to limit a bid will depend on the circumstances of each case.

## g. Can members of a bidder consortium be changed during a procurement procedure?

This would depend on the terms of the applicable tender. It would not be common for a member of a bidder consortium to be changed after the submission of a tender and even less likely that such member can be changed after award of a tender.

## h. Do limitations apply for participation of related bidders in the same procurement procedure with competitive bids?

If the related bidders are bidding as a consortium, there should not be any competition issues as the bidders would likely be treated as a "single enterprise", and assuming that the terms of the tender do not prohibit such participation.

Assuming that the related bidders are participating as separate bidders in a competitive bid, generally, and subject to certain exemptions, we would highlight that the Competition Act prohibits all agreements between undertakings, decisions by associations of undertakings or concerted practices which have as their object or effect the prevention, restriction or distortion of competition within Singapore. As such, these anti-trust rules may operate to limit a participation of related bidders in the same procedure with competitive bids will depend on the circumstances of each case. It may help for related bidders to be transparent with the authorities in the event they do wish to bid in the same procedure with competitive bids, where there is a valid reason for submitting such separate but competitive bids.

# 5. Specifications

## a. Are there any rules on the specifications?

There are mandatory requirements governing the technical specifications issued by contracting authorities under the GP Regulations. These are mainly designed to ensure that the technical specifications are in terms of performance rather than specific design or descriptive characteristics, and do not refer to specific goods or services (e.g., goods or services from a particular producer), unless accompanied by the words "or equivalent".

Technical specifications should be based on applicable international standards or, where no such international standards exist, applicable local standards.

The Supplier Guide provides that the specifications should contain a complete description of the goods, services or construction services required, including:

the quantity of the items required;

the time-limits for delivery of the items; and

the required duration for the services.

It is recognised that in certain cases, the contracting authority may wish to provide for some flexibility in the requirements to allow for diversity in the proposals submitted by bidders. In such instances, the contracting authority may issue a request for proposal based on requirements that are crafted more loosely, and enter into discussions with prospective suppliers on the precise scope of works pursuant to this process.

## b. Are bidders allowed to change the specifications or submit their own standard terms of business?

The Supplier Guide provides that the government agency issuing a Quotation or Tender would typically provide its contractual terms and conditions to ensure a level playing field for all potential bidders. Further guidance is provided by the Supplier Guide in this respect, which states that the terms and conditions in Quotations and/or Tenders are defined upfront and meant to be applied to all bidders. Particularly, the Supplier Guide advises bidders not to vary these terms and conditions. If there is a need to do so, the Supplier Guide advises bidders to submit the "base offer" in accordance with the terms and conditions in the Quotation and/or Tender and provide as an alternative offer, their proposed changes to the terms and conditions. Typically, where a bidder is unable to meet certain specifications, the bidder will need to also indicate its non-compliance with the specifications of the tender.

## c. Is the protection of Small and Medium Enterprises addressed in procurement legislation? If so, how?

There is no preferential treatment accorded to Small and Medium Enterprises under current government procurement legislation.

# 6. Contract Award

## a. Are there any rules on the award of contracts?

Under the GP Regulations, a contracting authority shall award the contract to the tenderer which the contracting authority has determined to be fully capable of complying with the terms and conditions of the contract, and whose tender:

offers the lowest price, or has been determined by the contracting authority to be the most advantageous; and

fully complies with the criteria for the award of the contract and the essential requirements, as set out in the contract documents.

A contracting authority may decide not to award the contract if it is of the opinion that it is in the public interest not to do so.

In practice, evaluations leading to the award of tender is carried out by a tender evaluation committee ("TEC") comprising of procurement officers, representatives from user departments and technical specialists. The TEC may recommend the award of the tender to one or more tenderers, or recommend that no award be made (whether all tender proposals have been evaluated or not).

However, the final decision to award the tender is vested with the Tender Approving Authority ("TAA"). The members in the TAA must be different from those in the TEC.

## b. Are there any limitations regarding the offered bid price?

We are not aware of any specific limitations regarding the offered bid price. However, the Supplier Guide provides a bid submission checklist for suppliers to assist suppliers in their proposal preparations. This checklist provides that the pricing schedule submitted in the proposal should be the best value-for-money offer the supplier can provide, and that the supplier should not undercut its prices. The checklist also warns against abnormally low bids which could result in potential short term issues such as being unable to meet the service delivery standards, which could potentially lead to long-term implications such as debarment.

## c. Are there any rules on alternative bids?

There are no mandatory rules in respect of the submission of alternative bids.

In practice, the contracting authority will typically state in the tender documentation if it is willing to consider an alternative offer from tenderers. If the contracting authority is willing to do so, tenderers have the option of submitting an alternative bid which functionally meets the technical specifications, but uses different materials, designs or processes from those specified in the tender. However, the relevant tenderer would still have to submit a base offer which meets all the requirement specifications.

# 7. Exemptions to Competitive Bidding

## a. Are there any exemptions to competitive bidding, i.e. under what conditions is a direct award/single sourcing permissible?

A contracting authority is only permitted to use a limited tendering procedure (whereby no tender is called or suppliers are invited individually to submit a tender) for procurement in certain circumstances, such as:

where an open or selective tender procedure was used but no tender was received;

when the goods or service to be procured can only be supplied by a particular supplier for technical reasons, or for reasons connected with the protection of exclusive rights (such as intellectual property rights), or by reason of being a work of art;

when (but only if it is strictly necessary), for reasons of extreme urgency brought about by events unforeseeable by the contracting authority, the goods or service cannot be obtained in time by means of the open procedure or the selective procedure; or

when the service to be procured is an extension of an existing service, and where to obtain the service from a person other than the person who performed the existing service will result in the contracting authority obtaining a service not meeting its requirements of interchangeability with existing goods, installation or service.

Further, a contracting authority must not carry out limited tendering with a view to avoiding competition or protecting suppliers established in Singapore or otherwise in a manner which is discriminatory against any applicable supplier.

## b. What are the consequences for violation of the competitive bidding requirement?

If a contracting authority allegedly violates the competitive bidding requirement, a supplier or bidder can bring a challenge before the Government Procurement Adjudication Tribunal ("**Tribunal**") for such alleged breach of duty by a contracting authority. Details are set out in Section 8 below.

# 8. Remedies and Enforcement

## a. Are there any remedies and enforcement mechanisms in the procurement legislation?

Under the GPA, a contracting authority undertaking a relevant procurement has a duty to comply with the procurement framework set out in the GP Regulations.

The breach of such duty by a contracting authority cannot be made the subject of any court proceedings. However, a challenge may be submitted by a relevant supplier who has suffered loss or damage as a result of the breach, or reasonably risks suffering such loss or damage.

Such a challenge would be brought before the Government Procurement Adjudication Tribunal ("Tribunal") pursuant to the process set out in the GPA and the Challenge Proceedings Regulations.

## b. Are remedies available outside the scope of procurement legislation, e.g. civil law damage claims?

In theory it may be possible to allege a breach of statutory duties if a contracting authority fails to comply with the guidelines set out in the IM on Procurement. However, such a course of action has not been tested in the courts.

Errant officers may potentially be subject to disciplinary proceedings if they are found to be personally culpable for any non-compliance with the IM on Procurement.

## c. Is there a specific forum before which procurement disputes are heard?

As mentioned in Section 5(a) above, complaints alleging contravention of the procurement rules set out in the GP Regulations will be brought before the Tribunal.

## d. Are there any timing requirements for the review?

A relevant supplier will need to lodge a notice of challenge with the Tribunal no more than 15 days after the date on which the facts constituting the basis of the challenge first took place.

## e. What are the main preconditions for review?

A supplier who wishes to bring a challenge before the Tribunal is required to, within 15 days from the date the facts constituting the basis of the challenge first took place:

lodge a notice of challenge the ("Notice of Challenge");

pay such fee as may be prescribed for bringing a challenge before the Tribunal; and

serve a copy of the Notice of Challenge on the contracting authority undertaking or who has undertaken the procurement which is the subject of the challenge.

## f. What are admissible grounds for starting a review proceeding?

A challenge may brought before the Tribunal by a supplier to whom a contracting authority owes a duty and who has suffered, or reasonably risks suffering, loss or damage as a result of the breach. The duty referred to here is the duty of a contracting authority to comply with the GP Regulations and other regulations made under the authority of the GPA.

## g. Does a review proceeding affect an ongoing procurement procedure or an awarded contract respectively?

Under Section 16 of the GPA, the applicant in a challenge proceeding may, at any time after he has fulfilled the requirements referred to Section 8(e) above, apply to the Tribunal for an order to suspend, pending the disposal of the challenge:

the procedure leading to the award of the contract for the procurement which is the subject of the challenge; or

the implementation of any decision made while undertaking such a procedure.

## h. What are the consequences of a successful review proceeding for the affected procurement procedure or awarded contract respectively?

If the Tribunal makes a determination in favour of the applicant, the Tribunal may do one or more of the following:

order any decision or action taken by the contracting authority concerned in relation to the procurement which is the subject of the challenge to be set aside;

order the contracting authority to make a decision or take action, in accordance with the applicable regulations made under section 6, in place of that which has been set aside under paragraph (a);

order the contracting authority to amend any document pertaining to the procurement;

order the contracting authority to pay to the applicant the costs of participation in the qualification of suppliers, or the costs of tender preparation, reasonably incurred by the applicant for the purposes of the procurement.

In the case where a contract for the procurement has already been awarded, the Tribunal may only order the contracting authority to pay to the applicant the costs of participation in the qualification of suppliers, or the costs of tender preparation, reasonably incurred by the applicant for the purposes of the procurement. If the applicant did not incur any of such costs referred, then the Tribunal may only award the applicant the costs of the challenge proceeding.

## i. How long does a judicial proceeding for review take?

Except where the challenge has been disposed of in a preliminary hearing, the Tribunal is required to issue its determination on a challenge within 45 days from the date of lodgment of the Notice of Challenge by the applicant unless there are exceptional circumstances justifying an extension of time.

## j. Must unsuccessful bidders be notified before the award? If so, when?

Subject to limited exceptions, Regulation 31 of the GP Regulations requires a contracting authority to, as soon as possible after the award of a contract in respect of a procurement using open tendering or selective tendering, inform all suppliers who had participated in the procedure of its decision on the award.

## k. Are review proceedings common?

We are not aware of publicly available statistics of the number of challenge proceedings.

## l. Are damage claims in relation with procurement procedures common?

We are not aware of publicly available details of challenge proceedings.

## m. What are the leading court decisions involving procurement disputes?

We are not aware of any decisions issued by the Tribunal to date.

As mentioned in Section 5(a) above, disputes relating to the adherence of contracting agencies to government procurement rules cannot be heard in court. There have been some court decisions on disputes arising from government contracts (i.e., post-award) but these do not relate to the procurement process.

# 9. Other Relevant Rules of Law

## a. Are there any related bodies of law of relevance to procurement by public agencies?

Other pieces of legislation may contain provisions which are relevant to the procurement process. For example, the payment of bribes and other conduct which impinge upon the integrity or impartiality of personnel involved in the procurement process may constitute offences under the Prevention of Corruption Act (Cap. 241) and/or the Penal Code (Cap. 224). Anti- competitive conduct such as bid rigging would be regulated under the Competition Act (Cap. 50B) (see Section 2(d) above).

# 10. Industry sectors of special importance or with a specific procurement regime

## a. Are there any specific laws or practices that apply in the technology sector?

No, the government procurement rules described above apply to technology as well as other goods and services.

## b. Are there any specific laws or practices that apply in the defense sector?

As mentioned in Section 1(d) above, defence procurement is treated slightly differently. Further, The Defence Science and Technology Agency of Singapore has published an article "Contracting by MINDEF and DSTA - Understanding the Law and Practice of Defence Procurement in Singapore" which sets out the law and practice of defence procurement in Singapore.

## c. Are there any specific laws or practices that apply in the health care sector?

Public healthcare institutions in Singapore have been restructured to form part of government-owned corporations rather than operating as part of the government.

Singapore Health Services Pte Ltd ("Singhealth"), Singapore' largest group of public healthcare institutions, operates a procurement system separate from the processes on the government's GeBIZ platform. Information on Singhealth's processes can be found on (<https://www.singhealth.com.sg/AboutSingHealth/GroupProcurement/FAQ/Pages/Home.aspx>).

Likewise, the National Healthcare Group (another major group of public healthcare institutions) operates a procurement system separate from the government's GeBIZ platform, details of which can be found on <https://www.gpo.nhg.com.sg/introduction.asp>).

## d. Are there any specific laws or practices that apply to any other particular industry sector?

Singapore's electricity and energy market is liberalised. The sale and purchase of electricity (and other ancillary services required to maintain the secure operation of the power system) is governed by the rules and processes of the Energy Market Company Pte Ltd (the wholesale market operator of the National Electricity Market of Singapore (NEMS)) and regulations and policies of the Energy Market Authority.

# 11. Looking Ahead

## a. Are there any proposals to change the law in the future?

We do not foresee significant changes to the law. However, we do expect that the government procurement rules set out in the IM on Procurement should provide for more checks and balances and mitigating controls against fraud and other instances of non-compliance.

For example, in what is perhaps the most massive case of public sector fraud uncovered in Singapore, several officers of the Singapore Land Authority and their accomplices were recently charged with cheating the Authority of approximately S$12 million over the course of 2 years. The two senior employees were accused of rendering false invoices for fictitious IT maintenance and other services through various business entities set up by external parties. They apparently escaped detection by conspiring with each other and the external parties to circumvent the checks and balances that were in place. As a result, new roles and other requirements were implemented by the Singapore government in order to strengthen the system against similar crimes in the future.

Further, the Auditor-General's Office ("AGO"), which audits government ministries, organs of state, statutory boards and government funds on the proper accounting of public funds and use of public resources, has reported various instances of non-compliance with government procurement rules over the years.

In its report for 2010/2011, the Auditor-General notes that many of the lapses found in the audits are in respect of procurement, and arose when the fundamental principles of government procurement are not adhered to. Examples offered by the AGO include agencies "waiving competition based on weak grounds, setting an unrealistically short period for submission of bids thereby limiting competition, not giving equal opportunity to tenderers to revise their bid price when requirements were changed, and accepting a tender which did not meet tender specifications". In this report, the AGO found pervasive lapses in two projects undertaken by the Police Coast Guard, which resulted in the department "being grossly overcharged and making large payments for materials before delivery". Several agencies were also censured for providing inaccurate or incomplete information to TAAs for their decision on the acceptance of a tender. Since then, there may have been a tightening of processes to prevent a recurrence of such lapses. We note that in its most recent report for 2016 (accessible at<http://www.ago.gov.sg/docs/default-source/report/18599c06-73f0-4965-a32b-db9394110e4a.pdf>), whilst the report had highlighted several lapses by various agencies in respect of procurement, procurement lapses were not specifically highlighted by the Auditor-General as a significant issue.

In any event, we expect that the Singapore government to continue to be vigilant and will continue to tighten processes to prevent a recurrence of such lapses.

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