

Anti-corruption policies in Asia and the Pacific: Thematic review on provisions and practices to curb corruption in public procurement Self-assessment report Singapore

Identifying reform needs, assessing progress and evaluating the effectiveness of anti-corruption policies and practices are central principles enshrined in the ADB/OECD Initiative and its Action Plan. In this context, the present self-assessment report from Singapore was prepared as background to the Initiative's thematic review exercise on measures to curb corruption in public procurement in the Asia-Pacific region.

This thematic review on public procurement was initiated in reaction to the findings of the Initiative's 2003-2004 in-depth analysis of the legal and institutional anti-corruption frameworks of the Action Plan's then 21 endorsing countries against the standards of this Plan ("Anti-Corruption Policies in Asia and the Pacific – the legal and institutional frameworks", November 2004). In this study, public procurement was identified as one of the areas requiring particular attention in the Asia and Pacific region and where consequently the Initiative's Steering Group had a vital interest to promote reform.

With this aim, the group agreed to pursue analytical work on corruption in public procurement through a thorough review of relevant existing policies, practices and rules so as to assist participating governments in better understanding the corruption risks inherent in their countries' institutional settings and procurement practices. This thematic review further seeks to assess how countries translate into practice their commitment made under the Action Plan to curb corruption in public procurement. Eventually, the review's findings will provide governments with an analytical framework to design policies and procedures that ensure greater transparency and integrity in public procurement and to identify priorities for reform in this respect.

In line with the Action Plan's principle of self-assessment, the review is conducted on the basis of information provided by participating countries in reply to a questionnaire specifically prepared for this purpose by the ADB/OECD Initiative. The present document represents the replies submitted by Singapore in this framework.

Further information on the exercise, on other participating countries and on the analysis' outcome is available at the Initiative's website at <http://www1.oecd.org/daf/asiacom/stocktaking.htm#trpp>.



A. General framework

Legal and organizational framework:

1. Please list and briefly describe laws and regulations related to government procurement, including those that give exemption to the standard government procurement rules. Where available, please attach a copy or indicate an internet-site for download of these regulations, if possible in English language. Ensure to include secondary legislation, rules and procedures. Also, please indicate relevant international or regional agreements¹ that your country is committed under, including its level of involvement (e.g. signature, ratification, implementation).

The Singapore Government is bound by certain commitments in the various international agreements on Government Procurement which Singapore has entered into, specifically, the 1994 Agreement on Government Procurement under the World Trade Organisation ("GPA"), 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), EFTA-Singapore Free Trade Agreement (ESFTA) and Singapore-Australia Free Trade Agreement (SAFTA), and the United States-Singapore Free Trade Agreement (USSFTA).

Singapore enacted the Government Procurement Act, Chapter 120. There are four subsidiary legislations for the Government Procurement Act, namely Government Procurement (Challenge Proceedings) Regulations, Government Procurement Regulations, Government Procurement (Application) Order and Government Procurement Act (commencement) Notification 2002. These information can be downloaded from <http://statutes.agc.gov.sg>. In addition, there is a Government Instructions Manual on procurement procedures and this is publicly available on <http://www.gebiz.gov.sg>. All government officials are required to declare conflict of interests, if any, at any stage of the procurement process. This is to ensure integrity in carrying out the procurement process.

2. Please explain the repartition of tasks and responsibilities in the procurement process among centralized, decentralized and specialized authorities (in particular: design of policies and standards; capacity building; definition of needs and terms of individual tenders; execution of different procurement stages from advertising to contract awarding; dispute resolution; control of the fulfillment of the terms and conditions by the contractor).

Singapore does not have local government/ sub-central authorities.

Government procurement activities in Singapore are decentralized to individual Ministries, Departments and Statutory Boards (collectively known as "Government Procurement Entities") that make their own arrangements. However, they must adhere to central guidelines, namely the Government Instructions Manual (IM) 3B – Contracts and Purchasing Procedures, issued by the Ministry of Finance.

The Government Procurement Entity ("GPE") will determine the type and quantity of goods, services or construction services for their intended Government Procurement ("GP"). It will then obtain the required approval to proceed with the intended GP from the relevant approving authority.

The GPE will evaluate the tenders and make recommendations on the tender award. If the tender is complex, a formal Tender Evaluation Committee ("TEC") would be formed.

¹ e.g. APEC Non-Binding Principles on Government Procurement; WTO Agreement on Government Procurement; etc.

A decision on the recommendation on tender by the GPE will be made by the Tender Approving Authority (“TAA”) comprising a panel of senior officials with the authority to approve or reject recommendations made by the GPE.

No member of the TAA shall be involved in Tender evaluation. Where there could be a conflict of interest, a member of the TAA shall declare his interest and disqualify himself as a member of the TAA. The alternate member appointed will act as the TAA member.

A very limited centralized purchasing is carried out for common goods and services which are consumed service-wide, by central procuring entities.

3. Is procurement of goods governed by the same procedures as procurement of services?

Yes.

4. Does the procurement law establish a Public Procurement Office (PPO)? Is the PPO appropriately staffed against its mandate? In this context, please state the total number of staff involved in public procurement country-wide. Are the procurement entities/PPO provided with adequate financial resources for the execution of their tasks?

Singapore does not have a Public Procurement Office (PPO) given that our procurement activities are decentralized.

5. Please name the sectors, areas or conditions subject to particular procurement rules (if applicable, e.g. military; local governments; state owned enterprises; urgency).

All procurements are made through the government electronic business (GeBIZ) website (website: <http://www.gebiz.gov.sg>). This means that all quotations and tenders are invited and awarded via GeBIZ. Interested suppliers will register themselves as GeBIZ Trading Partners (GTPs). For quotations and tenders where GTPs are invited to quote, GPEs shall not run parallel manual quotation/tender exercises inviting non-GTPs to bid.

The only exceptions are for small value purchases where the GPE purchases directly from the supplier without inviting quotations; and when the purchase is from a sole source or where the goods or services are so rarely procured that the supplier does not find it cost-effective to register as a GTP.

The Singapore government encourages demand aggregation (DA) and bulk purchases of common goods and services so that government procuring entities (GPEs) can collectively enjoy bulk discounts from the economies of scale. For DA contracts that are already established and uploaded onto GeBIZ, GPEs should buy off these contracts via GeBIZ.

For GPEs who choose to buy outside the established bulk contracts, procurement officers would need to highlight to their relevant approving authority that there is an existing bulk contract for these goods / services and their justification on why they are not using these contracts. They should also indicate the price differential when seeking approval from their tenders board for awarding their own contracts.

With regard to the implementation of international and bilateral agreements on GP, the GP procedures are compliant with Singapore’s commitment under the WTO – GPA and our FTAs. The intended GP, however, is covered by the following Exclusion Notes found in Singapore’s GPA offer:

- a. The Agreement shall not apply to any procurement made by a covered entity on behalf of a non-covered entity;
- b. This Agreement will generally apply to purchases by the Singapore Ministry of Defence of the [FSC categories listed in Annex 1 of Singapore's GPA offer] (others being excluded) subject to the Government of Singapore's determinations under the provision of Article XXIII, paragraph 1 [of the GPA];

- c. The Agreement shall not apply to any procurement in respect of construction contracts for chanceries abroad and headquarters buildings made by the Ministry of Foreign Affairs;
- d. The Agreement shall not apply to any procurement in respect of contracts made by the Internal Security Department, Criminal Investigation Department, Security Branch and Central Narcotics Bureau of the Ministry of Home Affairs as well as procurement that have security considerations made by the Ministry.

Procurement policies and practices:

6. Do model tender documents exist (e.g. handbooks, model forms, model contracts, etc)? If yes, is their use mandatory, and do they contain a specific anti-corruption clause?

All Ministries, Departments and Statutory Boards have to use the standard conditions of contracts and instructions to tenderers (Appendix B7A of IM 3B – Conditions of Contract). The set of standard conditions of contract has a clause on corruption: “The Authority may terminate the Contract and recover from the Contractor the amount of any loss resulting from such termination, if the Contractor shall have offered or given or agreed to give to any person any gift or consideration of any kind as an inducement or reward for doing or forbearing to do or for having done or forborne to do any action in relation to the obtaining or execution of the Contract with the Authority or for showing or forbearing to show favour to any person in relation to any contract with the Authority, or if the like acts shall have been done by any person employed by the Contractor or acting on his behalf (whether with or without the knowledge of the Contractor) or if in relation to any Contract with the Authority the Contractor or any person employed by him or acting on his behalf shall have committed any offence under Chapter IX of the Penal Code or Prevention of Corruption Act or shall have abetted or attempted to commit such an offence or shall have given any fee or reward the receipt of which is an offence under Chapter IX of the Penal Code or the Prevention of Corruption Act.”

7. Please provide the latest available economy-wide annual total numbers and values of purchases, with breakdown a) by sector and b) by type of procurement. In this context, please describe the procurement types foreseen by law (e.g. sealed tender, direct purchase; limited tendering) and the policy of your Government towards these types.

In relation to tenders awarded from 01 April 2003 to 31 Mar 2004, the figures by type of procurement are as follows:

Type of Procurement	Total Number	Total Value
a. Goods	1232	SGD 1,248,812,689.11
b. Services	1238	SGD 1,552,520,837.63
c. Construction Services	600	SGD 4,695,425,881.70

Tenders are invited by using the Open, Selective or Limited Tendering procedures.

All government procurement of above S\$70,000 must adopt tendering procedures. Under an Open Tender, any supplier may participate by responding to Tender Notices.

An Open or Selective Tender will be called unless the circumstances allow for a Limited Tender to be called.

For a Selective Tender to be used, first a qualification of interested suppliers, based on their capabilities, is carried out so as to exclude suppliers who do not meet the minimum requirements. Suppliers qualified in this process are then invited to submit tenders.

In a Limited Tendering procedure, tenders are invited from only a few suppliers, or from one pre-identified supplier. The use of a Limited Tender has to be approved by the Permanent Secretary (for Ministries) or the CEO (for a statutory board). Some instances where a Limited Tender may be used are when no responsive tender is received from an earlier Open or Selective Tender, when it concerns national security, or when it is not feasible/practical to call for open tenders e.g. because of intellectual property rights or for works of art.

8. Please explain under which conditions pre-selection procedures are conducted.

Singapore conducts pre-selection procedures, which we call selective tendering procedures. These are used in complex government procurement which requires tenderers with sophisticated and high level know-how, capabilities and experiences. (Please refer to Annex A for details of “Selective Tendering Procedures”)

9. If your country is currently engaged in or planning a major reform of its procurement system, please briefly state the scope and objectives of this reform.

Singapore (Ministry of Finance) constantly reviews the procurement guidelines and government instructions manual. Enhancements are made to the procurement system whenever necessary.

Currently, it is a requirement that all procurements are made through the GeBIZ (website: <http://www.gebiz.gov.sg>). This means that quotations and tenders are invited and awarded via GeBIZ. Interested suppliers will register themselves as GeBIZ Trading Partners (GTPs) and they will then be given an account in GeBIZ for procurement transactions with the government.

The advocating of procurements through the Internet GeBIZ is part of Singapore’s e-Government Action Plan (“e-GAP”).

B. Transparency and Fairness

Transparency of general procurement policies and regulations:

10. Are the existing laws, regulations and policy guidelines on public procurement publicly available and, if yes, where/how?

The public have free access to the Government Procurement Act. Procurement guidelines which are relevant to the public and vendors are also made available to them via the Internet at the Government Electronic Business (GeBIZ) web-site: <http://www.gebiz.gov.sg>

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11. In your country, do certain territorial entities or institutions establish lists of eligible contractors (sometimes called “white-lists”)? If yes, please explain the criteria for a company to be included in or excluded from this list, and what use is made of such lists.

Singapore does not practice this.

12. Is a bid security and/or a performance guarantee required from the bidder? What are the procedures for advertisement of procurement opportunities?

Vendors may be asked to pay a security deposit if the procurement is for goods/ services contracts above SGD \$500,000. The security deposit will be refunded to the vendors after they have satisfactorily completed the performance guarantee period.

Procurement opportunities are posted on the Internet at the Government Electronic Business (GeBIZ) web-site. GeBIZ also contains information on tender bids and tender awards. For further details please visit the website: <http://www.gebiz.gov.sg>

Notices contain information such as procuring entity, description of products, service, works to be procured, tender opening and closing dates and venue for collection of tender documents.

Transparency of procurement opportunities:

13. Describe where and how tender opportunities are published, including if their publication is mandatory or depends on certain criteria (if so, please list)? Please state if a fee has to be paid to receive tendering documents and – if yes – how this fee is fixed and whether other processing fees apply. Please briefly explain whether your country allows adequate and reasonable time for interested suppliers to prepare and submit responsive bids.

All procurement opportunities exceeding SGD \$3,000 must be published on the GeBIZ internet website.

Tender documents can be downloaded from the GeBIZ website. In some instances, a small amount of fee is paid for the tender document.

Our Government Instruction manual requires reasonable and sufficient time be given to tenderers to prepare responsive bids. In setting the period of tender, GPEs are mindful not to set so short a timeline such that only the incumbent can respond. As a guide, the minimum period of tender for all tenders is 14 days. As a norm, the period of tender should not be less than 21 days.

14. Are selection and award criteria prescribed by law? If yes, are they prescribed in an exclusive manner? Please name these criteria a) for procurement of goods, and b) for procurement of services (e.g. technical requirements, qualification of the bidder, evaluated price, expertise/experience, etc.) and those that are explicitly excluded (e.g. nationality of the bidder or other affinity, etc.). Is the description of these criteria in the tender documentation mandatory?

Subsidiary legislation Government Procurement Regulations under the Government Procurement Act requires criteria for awarding the contract to be stated in contract documents issued to tenderers. These criteria include any factors other than price that will be considered in the evaluation of tenders; and any cost elements to be included for the purposes of evaluating tender prices, such as transport, insurance and inspection costs, customs duties and other import charges, taxes and the currency of payment. In prescribing these criteria, all Ministries, Departments and Statutory Boards have to observe the principles of national treatment and non-discrimination as provided for in the legislation. (Please refer to Annex B for details on the evaluation criteria)

Transparency of contract evaluation and award procedures:

15. What is the procedure if none of the bids or too few – relative to a prescribed limit – fulfill the technical requirements as defined in the call for tender (e.g. reopening of the bid, negotiations, etc.)? Do you keep a register of all bids received?

Tender that fully complies with the specifications and criteria and is the lowest in price will be awarded. Ministries and statutory boards are required to state the evaluation criteria in tender documents. Tenders will be evaluated strictly, and contracts awarded according to the published criteria. All bids are selected and recorded in GeBIZ. If none of the bids meet the requirements, no contracts will be awarded and could result in a recall of tender.

16. Where and how are actions and decisions in the procurement process recorded? How long and where are these records preserved, and who can access this information?

Proper records of the entire procurement process, including decisions and actions taken during the process will be kept for 3 years. The records can be audited by the Ministry/ Department's Internal Audit Unit or the Government Auditor-General.

17. How and to whom is the final decision on awarding the tender disclosed? Do reasons for the selection of the winning bidder have to be stated? Are post-awarding negotiations allowed and, if yes, under what conditions?

Contracts awarded by the Singapore government are published on the Government e-Business (GeBIZ) website on the internet (website: <http://www.gebiz.gov.sg>). The award notice contains the name of the successful tenderer, contract sum, and a description of the contract along with the name and address of the awarding government procuring entity. The government procuring entity will at the request of unsuccessful tenderers, promptly explain reasons why their bids have not been accepted. Our government procurement manual does not allow ministries and statutory boards to conduct negotiations in the entire procurement process.

18. Are framework contracts allowed? If yes, what measures are taken to control against corrupt or unnecessary demands?

Framework agreements are defined as those where some element of interactive quotation between the ministries/ statutory boards and the awarded vendors/suppliers is necessary. Framework agreements may incorporate elements of a period contract i.e. contain fixed price items or items which are subject to some price fluctuation formula. In addition to a specified range of items, there is scope in framework agreements for including items that may not be available at the time of tender closing. Framework agreements are useful for purchases within a broad scope, but where it is not feasible or advantageous to determine the individual goods or services upfront. The award may be made to multiple vendors/suppliers for similar items or a range of goods and/or services. What can be varied and what is fixed should be clearly defined in the framework agreement.

To control against corrupt or unnecessary demands, GPEs wishing to make a purchase through framework agreements would observe the following procedures:

- a. For procurement of items without a fixed price, to obtain quotations from the contracted vendors/suppliers for the items required. Such Request for Quotations must make through GeBIZ. Verbal quotations may be obtained if the total cost of the intended purchase does not exceed \$3,000;

- b. If the particular item or an equivalent functional item can be obtained from more than one vendor/supplier, all the vendors/suppliers who are deemed to be capable of supplying the item should be approached for the quotations. If the GPE wishes to obtain quotations from a smaller number of vendors/suppliers, the justification for doing so should be put up to the QAA for approval;
- c. Evaluate the quotation(s) received and select the vendor/supplier if more than one quotation for the item is received;
- d. Seek approval for the award of the job to the selected vendor/supplier in accordance with the following limits:
 - (1) Up to \$1m - QAA
 - (2) \$1m to \$10m – Tenders Board A;
 - (3) Above \$10m – Tenders Board B.

C. Integrity

Integrity of procurement personnel:

19. Do codes of ethics or similar instruments exist that explicitly apply to procurement personnel and entities? If yes, do they specifically address corruption risks, and do they contain conflict of interest provisions (e.g. provisions making mandatory the declaration of personal interests by agents and buyers)?

We have a public service identity tagline “The Singapore Public Service: Integrity, Service, Excellence” focusing on Integrity that applies to all official dealings (including procurement) between civil servants and members of public. (You may see details of the identity tagline at the website: <http://www.publicserviceid.gov.sg/>)

The set of standard conditions of contract in the Government instructions manual also has a clause on corruption: “The Authority may terminate the Contract and recover from the Contractor the amount of any loss resulting from such termination, if the Contractor shall have offered or given or agreed to give to any person any gift or consideration of any kind as an inducement or reward for doing or forbearing to do or for having done or forborne to do any action in relation to the obtaining or execution of the Contract with the Authority or for showing or forbearing to show favour to any person in relation to any contract with the Authority, or if the like acts shall have been done by any person employed by the Contractor or acting on his behalf (whether with or without the knowledge of the Contractor) or if in relation to any Contract with the Authority the Contractor or any person employed by him or acting on his behalf shall have committed any offence under Chapter IX of the Penal Code or Prevention of Corruption Act or shall have abetted or attempted to commit such an offence or shall have given any fee or reward the receipt of which is an offence under Chapter IX of the Penal Code or the Prevention of Corruption Act.”

In addition, under para 2 of the Instructions Manual 2L – Conduct and Discipline, which applies to all public officers, it states that “Every (public) officer must conduct himself in a manner which upholds the integrity of the public service and public confidence in it. He must not act in such a way that it gives rise to public perception that he has obtained special advantage through his official position or connections, regardless of whether the special advantage was solicited by him or otherwise. He has a duty to exercise care to preserve his ability to be fair and impartial. He should avoid becoming beholden to any party, because of past favours or special concessionary treatment.”

20. Does your country provide for specific training for procurement personnel that include integrity issues? Please list manuals or policy guidelines that might exist to clarify procurement procedures and principles to procurement personnel (if existing please attach a copy or internet-address for download).

Singapore does provide specific training for procurement personnel which include integrity issue.

The Government Procurement Act and Government instructions manual set the procurement procedures and principles in public procurement. (Annexes C & D respectively)

21. Is procurement personnel required – and if yes by what regulation and to what institution – to report attempts by suppliers to undermine the impartiality and independence of action by offering bribes, benefits or other forms of inducement?

All public servants, including procurement personnel, are required to report to the Corrupt Practices Investigation Bureau of Singapore if they are offered bribes, benefits or other forms of inducement by suppliers.

Under Section 32 of the Prevention of Corruption Act, Chapter 241, “a public officer (including the procurement personnel) to whom any gratification is corruptly given or offered shall arrest the person who gives or offers the gratification to him and make over the person so arrested to the nearest police station and if he fails to do so without reasonable excuse, he shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$5,000 or to imprisonment for a term not exceeding 6 months or to both.”

In addition, under para 2 of the Instructions Manual 2L – Conduct and Discipline, which applies to all public officers, it states that “Every (public) officer must conduct himself in a manner which upholds the integrity of the public service and public confidence in it. He must not act in such a way that it gives rise to public perception that he has obtained special advantage through his official position or connections, regardless of whether the special advantage was solicited by him or otherwise. He has a duty to exercise care to preserve his ability to be fair and impartial. He should avoid becoming beholden to any party, because of past favours or special concessionary treatment.”

22. Which penal and/or administrative sanctions are applicable to procurement personnel for accepting or soliciting bribes? Are public officials liable for the economic damage that the procuring entity suffers? What is the policy that applies to procurement personnel for accepting or soliciting small facilitation payments such as gifts, benefits, hospitality (e.g. outright forbidden, accepted under certain circumstances, etc.; please explain).

Under Section 6(a) of the Prevention of Corruption Act, Chapter 241, any public servant (including the procurement personnel) who “corruptly accepts or obtains, or agrees to accept or attempts to obtain, from any person, for himself or for any other person, any gratification as an inducement or reward for doing or forbearing to do, or for having done or forborne to do, any act in relation to his principal's affairs or business, or for showing or forbearing to show favour or disfavour to any person in relation to his principal's affairs or business, he shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$100,000 or to imprisonment for a term not exceeding 5 years or to both”.

Where government contract is concerned, enhanced punishment is meted out to the guilty public servant under Section 7 of the Prevention of Corruption Act which states: “A person convicted of an offence under Section 5 or 6 shall, where the matter or transaction in relation to which the offence was committed was a contract or a proposal for a contract with the Government or any department thereof or with any public body or a subcontract to execute any work comprised in such a contract, be liable on conviction to a fine not exceeding \$100,000 or to imprisonment for a term not exceeding 7 years or to both.”

In addition, Section 10 of the Prevention of Corruption Act also states that: “A person –

- a. who, with intent to obtain from the Government or any public body a contract for performing any work, providing any service, doing anything, or supplying any article, material or substance, offers any gratification to any person who has made a tender for the contract, as an inducement or a reward for his withdrawing that contract; or

b. who solicits or accepts any gratification as an inducement or a reward for his withdrawing a tender made by him for that contract,

shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$100,000 or to imprisonment for a term not exceeding 7 years or to both.”

Civil proceedings can be initiated against a corrupt public official even after he has been convicted in court for corruption, under Section 14(1) of the Prevention of Corruption Act, which states: “Where any gratification has, in contravention of this Act, been given by any person to an agent, the principal may recover as a civil debt the amount or the money value thereof either from the agent or from the person who gave the gratification to the agent, and no conviction or acquittal of the defendant in respect of an offence under this Act shall operate as a bar to proceedings for the recovery of that amount of money value.”

Both the anti-corruption legislation and the Government instructions manual (IM2L - Conduct and Discipline & IM3B - Conditions of Contract) prohibit the acceptance and solicitation of all corrupt gratifications, regardless of the value.

Integrity of bidders and suppliers:

23. Which penal sanctions are applied to a bidding company as a legal person and to its employees if it is found guilty of corruption related to the bidding procedure? Is the company liable for the economic damage that the procuring entity suffers?

The party responsible (either the company or an employee of the company) for any corruption offence would be prosecuted in court under the Prevention of Corruption Act, Chapter 241.

Our standard conditions of contract provide that the ministry/ statutory board may terminate the contract and recover from the Contractor the amount of any loss resulting from such termination, if the Contractor shall have offered or given or agreed to give to any person any gift or consideration of any kind as an inducement or reward for doing or forbearing to do or for having done or forborne to do any action in relation to the obtaining or execution of the Contract with the Authority or for showing or forbearing to show favour to any person in relation to any contract with the Authority, or if the like acts shall have been done by any person employed by the Contractor or acting on his behalf (whether with or without the knowledge of the Contractor) or if in relation to any Contract with the Authority the Contractor or any person employed by him or acting on his behalf shall have committed any offence under Chapter IX of the Penal Code or Prevention of Corruption Act or shall have abetted or attempted to commit such an offence or shall have given any fee or reward the receipt of which is an offence under Chapter IX of the Penal Code or the Prevention of Corruption Act.

24. Do your country’s laws and regulations permit authorities to suspend, temporarily or permanently, from competition for public contracts and/or from other commercial activities an enterprise determined to have bribed a public official? If yes, is such disqualification mandatory or optional and which body decides on the disqualification and its exact terms? Which means are employed to implement the disqualification (e.g. publicly available list, declaration in the bidding process...)?

The authority for debarment of defaulting contractors lies with the Standing Committee on Debarment (SCOD). The members of this Committee are:

- a. Permanent Secretary (Finance) or his deputy, as Chairman;
- b. Permanent Secretary (Transport) or his deputy;
- c. Permanent Secretary (Environment) or his deputy;
- d. Permanent Secretary (National Development) or his deputy;
- e. Representative of the Attorney-General;
- f. Representative of Building and Construction Authority; and

g. Director, Corrupt Practices Investigation Bureau.

Where corruption/ rigging involved in a public tender and a contractor is involved, the Corrupt Practices Investigation Bureau of Singapore would, where appropriate, recommend to SCOD for debarment action or otherwise, as soon as possible after the court decision which establishes that the contractor had bribed the public sector officer concerned is made available.

If approved by SCOD:

- a. Contractors involved in corruption/ rigging and recommended by the CPIB for debarment will be debarred from all lines of business for a minimum of 5 years regardless of the amount involved;
- b. Directors/partners/sole proprietors of the debarred companies/businesses who are involved in corruption/rigging and recommended by CPIB will also be debarred;
- c. Other companies/businesses on which blacklisted directors/partners/sole proprietors sit will also be debarred;
- d. The existing and new subsidiaries of the principal offending company (that is, companies in which the principal offending company has 50% or more ownership directly or indirectly) will also be debarred.

25. Do bidders have to explicitly declare their abstention from any means that could improperly influence the procurement process or decision and, if yes, do such declarations also cover such unlawful practices by subcontractors or other third parties?

Singapore does not require bidders to make such a declaration. Nonetheless, bidders may be subjected to investigation under the Prevention of Corruption Act, Chapter 241, if they are found to have improperly influenced the procurement process through corruption means, or under the provisions of the other relevant Acts (under Singapore law) if the improper influence is through other criminal means.

26. Do bidders have to disclose commissions, gratuities, or fees that have been or have to be legally paid to individuals or sub-contractors for their services provided for instance in the preparation of a bid or the execution of the contract?

All legal payments made need not be declared or disclosed by the bidders.

D. Accountability

Separation of responsibilities and independent scrutiny:

27. Which means are employed to avoid insulation of procurement staff and to ensure mutual control? (e.g. rotation of officers, decisions taken/validated by more than one actor, etc.)?

Officers responsible for GP shall be rotated from time to time where practicable. Different officers shall preferably supervise different stages of work.

Officers involved in any stages of the GP process shall declare and disqualify themselves from handling GP in which they or their close relatives have significant interest.

Officers delegated with responsibility for GP shall be of the level of seniority consistent with the responsibility required.

Professionally qualified officers should normally be employed as supervising officers to ensure the quality of works.

GP officers for whom procurement activities take up 50% or more of their work will be subject to the training framework. Under the framework, new GP officers are required to attend a government procurement course and pass a competency test, before they undertake procurement activities.

Evaluation is carried out by a tender evaluation committee (TEC) comprising procurement officers and representatives from user departments and technical specialists while approval will be made by the Tender Approving Authority (TAA). The members in the TEC must be different from those in the TAA.

28. Are there regular and systematic internal and external audits of procuring entities/PPOs? If yes, are they mandatory; which bodies are in charge of this audit; are the audit reports publicly available? Are independent actors/NGOs invited to monitor the procurement procedures and what is the setting prescribed by law?

Internal audits are performed by the internal auditors at least once a year. External audits are conducted by the Auditor-General's Office once a year. The internal and external audits are mandatory. The audit report by the Auditor-General's Office is made available to the public annually.

The Auditor General is the independent actor and he could audit accounts of public authorities and bodies administering public funds, under Section 4 of the Audit Act, Chapter 17, which states: "*The Auditor-General shall —*

(a) if it is so provided by any written law, audit the accounts of any public authority; and

(b) if it is not so provided by any written law, may with the consent of the Minister if so requested by a public authority or a body administering public funds, audit the accounts of such public authority or body."

Review and complaint mechanisms:

29. Do your laws and regulations provide for review and complaints procedures? If yes, are they at administrative and/or judicial levels; what is the time limit for complaint/appeal, if any? How many complaint cases related to procurement are handled per year?

The anti-corruption legislation makes it mandatory for all public officials to report corrupt offers made to them by persons who have official dealings with them (including vendors). Various committees have been formed to review complaints procedures. There are also guidelines in the Government instructions manual that governs the procedures for handling complaints relating to public procurement. (Please refer to details in Annex E)

A Government Procurement Adjudication Tribunal, set up in accordance with the Government Procurement Act, will handle complaints of non-compliance with the GPA. The Tribunal has not received any cases. (Please refer to the details in Annex F)

30. Who is entitled to initiate a complaint procedure (e.g. competing bidders, any citizen, etc.) and how are potential informants protected against retaliation (e.g. confidentiality, anonymity)? Are the decisions of the body handling complaints binding? What are the consequences if a complaint is proven valid (e.g. reopening of the bidding, liquidation of damages, etc.)?

Every person affected by procedural lapses or corrupt offences may lodge a complaint to the relevant department or the anti-corruption agency. Under the Prevention of Corruption Act, the identity of an informer is protected.

For court prosecution of corruption offences, decision by the court is binding.

Depending on the severity of the action being complained against, the appropriate action will be taken against the guilty party (for example, court prosecution, termination of contract, re-tendering, liquidated damages, debarment from future public tenders etc).

Annex A: Government Instructions Manual 3 – Stores, Works & Services IM 3B Contracts and Purchasing Procedures

Selective Tendering Procedures

- #500 GPEs could adopt the selective tendering procedures for the Intended GPs. A selective tender is a GP in which only suppliers invited to do so by the GPE may submit a Tender Proposal. The selective tender is normally used in those complex Intended GPs which required tenderers with sophisticated and high level know-how, capabilities and experiences. For such cases, it may be more efficient for the GPEs to review only Tender Proposals that are submitted by tenderers who met the stringent requirements, and not those Proposals sent by tenderers that clearly could not meet the stringent requirement. As such, under the selective tendering procedures, the GPEs need to qualify the suppliers.
- #501 Selective tendering comprises the following 2 stages:
- (a) Pre-tender Qualification stage; and
 - (b) Tender cum Qualification Notice stage.
- #502 Pre-tender Qualification Stage
- A Qualification Notice is used to invite suppliers who are confident that they are able to meet all the specific requirements regarding financial solvency, experience, capability, etc., to submit their applications for qualification.
- #503 Qualification Notice
- A Qualification Notice shall be published in GeBIZ.
- #504 GPEs should consider if the two-stage tender procedures in B214 and B215 are better suited to the Intended GP, as compared to Selective Tendering Procedures.
- (505-519 not used)

Period of Qualification Notice

- #520 The Period of Qualification Notice refers to the time period between the publication of Qualification Notice and the final date for receipt of application for qualification from suppliers. The minimum Period of Qualification Notice shall be not less than 14 days.
- #521 Prior approval must be sought from the Permanent Secretary if the Period of Qualification Notice has to be less than the prescribed minimum. The Permanent Secretary has to personally satisfy himself that the circumstances justify a shorter Period of Qualification Notice.
- #522 GPEs shall reply promptly to any reasonable request for relevant information regarding the qualification, which are received more than five working days before the closing date for submission of application for qualification. If the request is received less than the five working days, the GPEs at its own discretion could disregard the request. The information given by the GPEs in response to a request must not give that supplier an advantage over its competitors in the procedure for the award of the contract.
- #523 For all Intended GPs, the GPEs need to seek the approval of the Permanent Secretary for extension of Period of Qualification Notice after a Qualification Notice has been published. In the event Period of Qualification Notice is extended, the corrigendum shall be issued at least one week before the original closing date.

Annex B: Government Instructions Manual 3 – Stores, Works & Services IM 3B Contracts and Purchasing Procedures

Invitation to Tender

Evaluation Criteria

- #260 In specifying the evaluation criteria for Intended GPs, GPEs shall consider the adequacy, soundness and completeness of the prescribed criteria since the subsequent evaluation, selection and approval of Tender Proposal for award shall be strictly based on these criteria.
- #261 Some of the evaluation criteria could be so critical that non-compliance with them will exclude the Tender Proposal from further evaluation. These are known as the Critical Criteria. GPEs shall indicate clearly the Critical Criteria in the evaluation criteria.
- #262 (a) In addition to cost elements incurred by GPEs, the evaluation criteria can contain other factors that are to be considered in the evaluation of tenders. These include financial solvency, prior experience, design, delivery requirements and reference sites. GPEs should note that track record is not required of companies and businesses for EPPU registration. So if track record is deemed necessary for the Tender, GPEs should specify such a requirement as an evaluation criterion. The cost elements include tender price and other costs and expenses that are incurred by the GPEs (such as transport, insurance and inspection costs, and in the case of imported goods or services, customs duties and other import charges, taxes and currency conversion costs). Other factors such as attendance at site show-rounds could be included as an evaluation criterion where this is critical for the Intended GP.
- (b) To cater for tender submissions by a consortium (defined as an unincorporated joint venture through the medium of a consortium or a partnership), guidelines on how the financial health and other aspects of a consortium would be evaluated shall be indicated clearly in the evaluation criteria. The consortium shall also be required to appoint a lead member who will submit the tender for and on behalf of all the consortium members. The consortium shall be required to provide documentary proof of the appointment of the lead member.
- #263 If GPEs are using special techniques to determine the most advantageous offer, these shall also be indicated in the evaluation criteria. These techniques include the application of numeric weights and point scores, life-cycle costing and others.
- #264 (a) In addition to other evaluation criteria set out in the Invitation to Tender, GPEs should specify GRA registration (namely the Expenditure and Procurement Policies Unit of the Ministry of Finance and the Building and Construction Authority, as the case may be) as an evaluation criterion. In particular, registration under the BCA shall be specified as a critical criterion while EPPU registration may be critical, non-critical or fully exempted.
- (b) If the EPPU registration is specified as a critical criterion, tender which do not satisfy this criterion should be rejected. On the other hand, if the EPPU registration is a non-critical criterion, the GPEs shall not reject the tenderers solely on the basis of tenderers not meeting the EPPU registration criterion.
- In the case where tenders are submitted by a consortium and EPPU registration has been specified as a critical criterion, then each member of the consortium must have its own valid EPPU registration and at least one of the members should be registered under any of the stipulated EPPU supply heads in the evaluation criteria.
- (c) GPEs which choose to do away with the EPPU registration will have to do the financial evaluation on their own with each tender called. GPEs may also practice a mixture of exemption and allowing GRA registration to be used in lieu of submission of the documents necessary for financial category evaluation. In other words, the Invitation to Tender can allow tenderers to submit either the necessary documentation for evaluation of financial standing, or declare their GRA registration status in lieu of submission of documentation. If track record is a specified evaluation criterion, GPEs will have to evaluate the sufficiency of track record

submitted by Tenderers. The guidelines for carrying out the evaluation for the financial and performance track records (if it is a specified evaluation criterion), are as follows:

- (i) GPEs have to include in the evaluation criteria in the Invitation to Tender financial soundness and performance track record (if it is a specified evaluation criterion), in lieu of GRA registration requirement;
- (ii) GPEs have to include in the Invitation to Tender a request for the documents stated in [Appendix B22](#) to be submitted, to facilitate GPEs' evaluation of the tenderers;
- (iii) GPEs have to carry out the financial and performance track record (if it is a specified evaluation criterion), evaluation as part of the tender evaluation process. It is not necessary to evaluate the financial and performance track records (if it is a specified evaluation criterion), of all tenderers. Only those tenderers in contention need to be evaluated;
- (iv) evaluation will be done using the guidelines in [Appendix B22](#).

- #265 The lowest financial grade in EPPU registration is S2 with a tendering capacity of up to \$100,000. For tenders of EPV from \$70,000 to \$100,000, GPEs should stipulate a minimum financial grade of S2, if necessary. For tenders with EPV below \$70,000, GPEs shall not state EPPU registration as an evaluation criterion in the tender.
- #266 With effect from 1 July 2001, ISO 9000 certification will be required for registration in the grade of B2 and above in the BCA's Contractors Registry; and for consulting firms engaging in architectural, engineering and quantity surveying works for projects in CW01, CW02 and CR08 project categories with EPV above \$30 million. Only ISO 9000 certificates issued by certification bodies accredited by the Singapore Accreditation Council (SAC) under the appropriate scope will be accepted. GPEs shall specify in the evaluation criteria for such Intended GPs, that ISO certification with certification bodies accredited by the Singapore Accreditation Council (SAC) under the appropriate scope is a Critical Criteria. Tenderers must submit proof of ISO certification together with the tender proposal. ISO certification submitted after the Tender Closing Date shall not be treated as part of the tender proposal. GPEs shall render any tender submissions as invalid if tenderers cannot comply with this requirement at the Tender Closing Date. This provision will apply only to contractors and consultants which are appointed directly by the GPE. This provision shall apply to Intended GPs where the Invitation to Tender is published on and after 1 July 2002.
- #267 GPEs shall specify that tenderers shall not be debarred on or after the closing date of tender.
- #268 For Tenders in the EPPU category EPU/CMP/20 (Software development), GPEs shall include in the Invitation to Tender a clause to allow for firms without the desired EPPU registration category to produce proof of paid-up capital as well as companies' latest certified/audited financial statements in lieu of EPPU registration. If track record is a specified evaluation criterion, relevant track record should include track record of the individuals/team who will be undertaking the particular project.
- #269 Tender evaluation shall then proceed in accordance with normal procedure. Should the intended award be to a firm with the desired EPPU registration, the tender award shall proceed as normal.
(270 not used)
- #271 Ministries and statutory boards may approach IDA and A*STAR for assistance to assess the technology and risk of awarding the contract to the start-up company. However, the decision on tender award would still lie with the individual ministry or statutory board.
- #272 GPEs may also apply paras B268 to B271 on a selective basis to other suitable tenders of a similar nature, where the EPV does not exceed \$5m.
- #273 If there are significant advantages to doing so, GPEs can let the tenderers quote prices in specified foreign currencies. The method of calculating the conversion to Singapore dollar for tender evaluation must be stated in the Invitation to Tender and be adhered to in the subsequent evaluation. As a guide, the Interbank Cross Rates for conversion of foreign currency into Singapore dollar published in newspapers or reputable websites on the internet the day before the tender closing date will be used for purpose of price evaluation.

Annex C: Government Procurement Act, Chapter 120

PART II Regulations Governing Procurement

Power to make regulations

6. —(1) The Minister may, for the purposes of implementing the Agreement on Government Procurement and other international obligations of Singapore relating to procurements by the Government and public authorities, make regulations to govern procurements subject to the Act.

(2) Without prejudice to the generality of subsection (1), the regulations may prescribe —

- (a) the technical specifications for a procurement;
- (b) the procedure for qualification of suppliers for a procurement;
- (c) the procedure for the award of a procurement contract and the procedure following such award;
- (d) the provision of any information pertaining to a procurement; and
- (e) different provisions for different procurements.

Duty of contracting authority

7. —(1) Subject to an order made under section 4(2), a contracting authority shall, in undertaking a procurement subject to the Act, comply with the regulations made under section 6.

(2) The duty of a contracting authority referred to in subsection (1) is a duty owed to —

- (a) relevant suppliers in relation to that procurement; and
- (b) such other supplier or class of suppliers as the Minister may, by order published in the *Gazette*, declare.

(3) A breach of a duty referred to in subsection (1) shall not be the subject of any proceedings in any court but may be the subject of a challenge brought before the Tribunal by a supplier to whom the duty is owed and who has suffered, or reasonably risks suffering, loss or damage as a result of the breach.

Annex D: Government Instructions Manual 3 – Stores, Works & Services IM 3B Contracts and Purchasing Procedures

GP Procedures

#110 Based on the EPV determined, the GPEs shall use one of the following types of GP Procedure for the Intended GP; the detailed guidelines can be found in subsequent paragraphs of this Section.

- (a) Procurement through "Small Value Purchases" (see paragraphs B115 to B117); or
- (b) Procurement through Quotation Procedures (see paragraphs B120 to B127); or
- (c) Procurement through Tendering Procedures, invited under the following procedures. The detailed guidelines for the specific tendering procedures are contained in the relevant provisions of this Section.
 - (i) Open Tendering (see paragraphs B151 to B468)
 - (ii) Selective Tendering (see paragraphs B500 to B563)
 - (iii) Limited Tendering (Limited Closed Tenders or Waiver of Competition) (see

paragraphs B600 to B622)

- #111 All procurement shall be made through GeBIZ. This means that all quotations and tenders are to be invited and awarded via GeBIZ. For quotations and tenders where GeBIZ Trading Partners (GTPs) are invited to quote, GPEs shall not run parallel manual quotation/tender exercises inviting non-GTPs to bid.
- #112 The only exceptions to IM3B para 111 are:
- (i) for Small Value Purchase where the GPE purchases directly from the supplier without inviting quotations; and;
 - (ii) when the purchase is from a sole source or where the goods or services are so rarely procured that the supplier does not find it cost-effective to register as a GTP.
- #113 If GPEs need to issue a Purchase Order to non-GTPs, they must use the GeBIZ Direct Purchase Order (DPO) module to issue a DPO.

Small Value Purchases

- #115 For Intended GPs of EPV not exceeding \$3,000, GPEs can adopt the following GP Procedures:
- (a) Small Value Purchases where the price of the item (goods or services) is known, either by previous purchase, posted prices by suppliers, the media or any other source of reliable information (e.g. flyers, purchase by other GPEs, the Internet), and where GPEs assess that the price is reasonable, GPEs may approach the suppliers and purchase the items from them directly.
 - (b) where the price is not known, GPEs are encouraged to source for more than one quote to ascertain the best value-for-money for the purchase. The method of sourcing for quotations can be verbal, through e-mail, fax, Internet e-catalogues or GeBIZ.
- (116 not used)
- #117 For Small Value Purchases, GPEs need not issue Purchase Orders. However, if Purchase Orders are being issued, the GPEs shall adopt the procedures for issuing of Purchase Orders under quotation as prescribed in paragraph B128.

Quotations

- 120 Quotations shall be invited via GeBIZ if the EPV of the Intended GP is above \$3,000 but not exceeding \$70,000. Open Quotations on GeBIZ, where all GTPs are allowed to quote, shall be the default mode of inviting quotations. GPE can invite quotations outside GeBIZ only if the Intended GP falls under the criteria in IM3B #112.
- #121 Quotations shall be invited by a Quotation Receiving Officer ("QRO"). The QRO is also the officer receiving quotations, processing the quotations received and putting up recommendations. The method of sourcing for quotations can include e-mail, posting on GeBIZ, fax or getting prices from electronic catalogues off the Internet or other published price lists/catalogues, provided the terms and conditions of purchases are posted clearly. Recommendations for award of quotations are approved by the Quotation Approving Authority ("QAA") who is authorised by the Permanent Secretary in person. The QAA shall be authorised by designation. The QRO and the QAA shall be different persons.
- #122 Invitation
- (a) The Invitation to Quote ("ITQ") provided to suppliers shall contain the following and other information necessary for the suppliers to submit responsive quotations and to avoid ambiguity and subsequent disputes with the suppliers:
 - (i) scope of the Intended GP;
 - (ii) the closing date and time of the invitation, which should be of a reasonable time period (for electronic Open Quotation the time period should not be shortened after it

- has been published on GeBIZ); and
- (iii) particulars of the submission point, such as the mailing address, designated fax number(s) or designated e-mail account(s) or GeBIZ.
- (b) Limited Quotation refers to:
- (i) Non-Open Quotations in GeBIZ where only selected GTPs (any number) are invited to quote; and
 - (ii) Quotations outside GeBIZ where less than 3 suppliers are invited to quote.
- (c) GPEs can invite a Limited Quotation if the Intended GP satisfies any of the following conditions:
- (i) when, for works of art or for reasons connected with protection of exclusive rights, such as patents or copyrights, or in the absence of competition for technical reasons, the products or services can be supplied only by a particular supplier and no reasonable alternative or substitute exists;
 - (ii) for additional deliveries by the original supplier which are intended either as parts replacement for existing supplies, or installations, or as the extension of existing supplies, services, or installations where a change of supplier would compel the GPE to procure equipment or services not meeting requirements of interchangeability with already existing equipment or services;
 - (iii) for reasons of extreme urgency brought about by unforeseen and urgent events;
 - (iv) for prototypes or a first product or service which are developed in the course of, and for a particular contract for research, experiment, study or original development – but not subsequent procurement;
 - (v) if it is in the public interest to limit competition.
- (d) GPEs should, for all quotations, even for instances of sole agency, provide access opportunities to other suppliers which may give better value-for-money or fresh and better ideas.
- (e) The QRO shall document the suppliers invited to quote.

#123 Receipt of Quotation

- (a) GPEs shall take the necessary measures to minimise and disallow access by unauthorised persons to all quotations, whether received by hand, mail, fax or e-mail. The QRO shall keep the quotations in a secure environment until the closing date of quotation.
- (b) GPEs should not reject quotations from suppliers who are not originally invited by GPEs.
- (c) GPEs could adopt the procedures for submission, receipt and opening of tenders (see paragraphs B360 to B383) for receipt of quotation.

#124 Recommendation

After the closing date of the quotation, the QRO shall evaluate all quotations received and make his recommendation for selecting a particular quotation for award. The recommendation shall be based on the criteria prescribed in paragraph B126.

#125 Approval of quotation

- (a) The QAA has to approve the invitation of quotations outside GeBIZ at the point of award. For Intended GP falling outside the criteria for Limited Quotations, the need for Limited Quotations also has to be approved by the QAA. If the QAA does not agree with not using GeBIZ and/or the calling of a Limited Quotation, the GPE would have to re-do the procurement from the beginning.

- (b) The QAA shall also approve the recommendation for award made by the QRO if the QAA is satisfied that the recommendation is made based on the criteria prescribed in paragraph B126.
- #126 The quotation selected shall be the one which is most advantageous to Government, that is the lowest priced quotation for an item of acceptable quality from a supplier which can be expected to meet the GPE's delivery requirement within the required period. The selection shall be based on like for like comparison.
- #127 The QAA can approve the recommendation for award made by the QRO if the Actual Procurement Value ("APV") of the recommended quotation does not exceed \$80,000. The APV shall be based on the sum of the actual quotation in accordance with the EPV computation method. Where the APV exceeds \$80,000 the quotations called should be voided, and fresh tenders invited.
- #128 Award of quotation
- (a) Only officers authorised under the Government Contracts Act (Chapter 118) may execute and sign contracts, including POs, on behalf of the Government. Statutory boards shall set up their own rules on approved contract signatories, by designation and not by person.
- (b) In GeBIZ, electronic POs shall replace paper POs. Electronic POs issued through GeBIZ are valid if they are approved electronically within the system by the authorised signatory. If for whatever reason, electronic approval is not available within GeBIZ at any GPE, the approval of PO shall be done outside the system through other acceptable forms of communication, such as authenticated e-mail or paper.
- (129-139 not used)

Annex E: Government Instructions Manual 3 – Stores, Works & Services IM 3B Contracts and Purchasing Procedures

Article XXII: Consultations and Dispute Settlement

1. The provisions of the Understanding on Rules and Procedures Governing the Settlement of Disputes under the WTO Agreement (hereinafter referred to as the "Dispute Settlement Understanding") shall be applicable except as otherwise specifically provided below.
2. If any Party considers that any benefit accruing to it, directly or indirectly, under this Agreement is being nullified or impaired, or that the attainment of any objective of this Agreement is being impeded as the result of the failure of another Party or Parties to carry out its obligations under this Agreement, or the application by another Party or Parties of any measure, whether or not it conflicts with the provisions of this Agreement, it may with a view to reaching a mutually satisfactory resolution of the matter, make written representations or proposals to the other Party or Parties which it considers to be concerned. Such action shall be promptly notified to the Dispute Settlement Body established under the Dispute Settlement Understanding (hereinafter referred to as "DSB"), as specified below. Any Party thus approached shall give sympathetic consideration to the representations or proposals made to it.
3. The DSB shall have the authority to establish panels, adopt panel and Appellate Body reports, make recommendations or give rulings on the matter, maintain surveillance of implementation of rulings and recommendations, and authorize suspension of concessions and other obligations under this Agreement or consultations regarding remedies when withdrawal of measures found to be in contravention of the Agreement is not possible, provided that only Members of the WTO Party to this Agreement shall participate in decisions or actions taken by the DSB with respect to disputes under this Agreement.
4. Panels shall have the following terms of reference unless the parties to the dispute agree otherwise within 20 days of the establishment of the panel:

"To examine, in the light of the relevant provisions of this Agreement and of (name of any other covered Agreement cited by the parties to the dispute), the matter referred to the DSB by (name of party) in document ... and to make such findings as will assist the DSB in making the recommendations or in giving the rulings provided for in this Agreement."

In the case of a dispute in which provisions both of this Agreement and of one or more other Agreements listed in Appendix 1 of the Dispute Settlement Understanding are invoked by one of the parties to the dispute, paragraph 3 shall apply only to those parts of the panel report concerning the interpretation and application of this Agreement.

5. Panels established by the DSB to examine disputes under this Agreement shall include persons qualified in the area of government procurement.

6. Every effort shall be made to accelerate the proceedings to the greatest extent possible. Notwithstanding the provisions of paragraphs 8 and 9 of Article 12 of the Dispute Settlement Understanding, the panel shall attempt to provide its final report to the parties to the dispute not later than four months, and in case of delay not later than seven months, after the date on which the composition and terms of reference of the panel are agreed. Consequently, every effort shall be made to reduce also the periods foreseen in paragraph 1 of Article 20 and paragraph 4 of Article 21 of the Dispute Settlement Understanding by two months. Moreover, notwithstanding the provisions of paragraph 5 of Article 21 of the Dispute Settlement Understanding, the panel shall attempt to issue its decision, in case of a disagreement as to the existence or consistency with a covered Agreement of measures taken to comply with the recommendations and rulings, within 60 days.

Annex F: Government Procurement Act, Chapter 120

PART III: Challenge Proceedings

Government Procurement Adjudication Tribunal

8. —(1) For the purposes of hearing and determining challenges referred to in section 7(3), there shall be established a Tribunal to be called the Government Procurement Adjudication Tribunal consisting of the Commissioner or a Deputy Commissioner.

(2) The Minister shall appoint a Commissioner and such number of Deputy Commissioners as he thinks fit.

(3) The Commissioner and Deputy Commissioners shall be appointed for a period of 2 years and shall be eligible for reappointment.

(4) No person shall be appointed or shall continue to hold office as Commissioner or Deputy Commissioner if he —

(a) is of unsound mind;

(b) is an undischarged bankrupt or has made any arrangement or composition with his creditors; or

(c) is convicted of an offence involving dishonesty, fraud or moral turpitude or has not received a free pardon.

(5) The Commissioner or a Deputy Commissioner may at any time resign from his office by giving notice in writing to the Minister.

(6) The Commissioner and Deputy Commissioners shall be deemed to be public servants within the meaning of the Penal Code (Cap.224), and shall enjoy the same judicial immunity as is enjoyed by a Judge of the Supreme Court.

(7) The Commissioner and Deputy Commissioners shall be paid such remuneration and allowances as the Minister may from time to time determine.

(8) The Minister may at any time revoke the appointment of a Commissioner or Deputy Commissioner who —

(a) ceases to be eligible to hold that appointment in accordance with subsection (4);

(b) has become permanently incapable of discharging the functions of a Commissioner or Deputy Commissioner, as the case may be; or

(c) has misconducted himself in such a manner as to render him unfit to continue holding the appointment.

(9) When the Commissioner is or is expected to be absent from duty, the Commissioner or, if the Commissioner is absent, the Minister may appoint a Deputy Commissioner to be acting Commissioner during the absence of the Commissioner.

Registrar and officers of Tribunal

9. —(1) The Minister shall appoint a Registrar of the Tribunal and such other officers of the Tribunal as the Minister considers necessary.

(2) The duties of the Registrar and other officers of the Tribunal shall, subject to this Act and any regulations made thereunder, be as the Minister directs.

(3) The Registrar and other officers of the Tribunal shall be deemed to be public servants for the purposes of the Penal Code (Cap.224).

Constitution of Tribunal

10. —(1) Subject to subsection (2), a challenge proceeding shall be heard and disposed of by the Tribunal consisting of the Commissioner or a Deputy Commissioner designated by the Commissioner.

(2) The Commissioner or a Deputy Commissioner shall not hear or dispose of any challenge proceeding if he is, directly or indirectly, interested in the procurement in relation to which the proceeding is brought.

(3) Where the Commissioner has commenced the hearing of a challenge proceeding and is unable through death, illness or other cause to complete the hearing or to dispose of the proceeding —

(a) the acting Commissioner appointed under section 8(9); or

(b) if the acting Commissioner is, directly or indirectly, interested in the procurement in relation to which the proceeding is brought, a Deputy Commissioner designated by the acting Commissioner,

shall complete the hearing and dispose of the proceeding.

(4) Subject to subsection (2), where a Deputy Commissioner who has commenced the hearing of a challenge proceeding is unable through death, illness or other cause to complete the hearing or to dispose of the proceeding, the Commissioner may designate another Deputy Commissioner to complete the hearing and dispose of the proceeding, or may himself complete the hearing and dispose of the proceeding.

Parties may be represented at challenge proceedings

11. —(1) The applicant and the contracting authority concerned may be represented by an advocate and solicitor at the hearing of any challenge proceeding.

(2) Where the contracting authority concerned is a ministry or department of the Government or is an organ of State, a legal officer may appear as advocate on behalf of the contracting authority and may make and do all appearances, acts and applications in respect of the proceeding on behalf of the contracting authority.

Initiation of challenge

12. —(1) A supplier who wishes to bring a challenge before the Tribunal (referred to in this Act as the applicant) shall, within 15 days from the date the facts constituting the basis of the challenge first took place —

(a) lodge with the Registrar a notice of challenge (referred to in this Act as the Notice of Challenge);

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

(c) 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.

(2) The Notice of Challenge shall be in such form and shall contain such information, and be accompanied by such documents, as may be prescribed.

Deposit

13. —(1) The applicant shall, at the time of lodgment of the Notice of Challenge with the Registrar of the Tribunal, deposit in cash or in such other form as the Registrar in a particular case may allow, such sum as may be prescribed (referred to in this Act as the deposit).

(2) The challenge shall be deemed to have been withdrawn if the applicant fails to comply with subsection (1).

(3) The deposit shall be used by the Registrar to pay any costs awarded by the Tribunal to the contracting authority concerned under section 21 in relation to the challenge.

(4) Where the deposit is insufficient to cover the costs referred to in subsection (3), the contracting authority concerned may recover the balance of the costs in the manner referred to in section 21.

(5) The Registrar shall, after the challenge has been disposed of by the Tribunal and if he is satisfied that there is no outstanding claims for costs by the contracting authority concerned against the applicant, release the deposit or the balance of the deposit, as the case may be, to the applicant.

Fixing of hearing of challenge

14. On receipt of a Notice of Challenge, the fee referred to in section 12(1)(b) and the deposit, the Registrar shall —

- (a) forward a copy of the Notice to the contracting authority concerned;
- (b) fix a time and place for the hearing of the challenge; and
- (c) give 14 days' notice of the hearing to the applicant and the contracting authority concerned.

Preliminary hearing

15. —(1) The Tribunal may at any time, on its own motion or upon the application of the contracting authority concerned, hear and determine, as a preliminary issue and with a view to a possible final disposal of the challenge, the validity of the challenge.

(2) For the purposes of subsection (1), the Tribunal shall declare a challenge invalid if —

- (a) the procurement which is the subject of the challenge is not a procurement subject to the Act;
 - (aa) the regulation made under section 6 which the contracting authority concerned is alleged to have breached is inapplicable to the procurement which is the subject of the challenge;
 - (b) the regulation made under section 6 which the contracting authority concerned is alleged to have breached is inapplicable, by virtue of an order made under section 4, to the procurement or the act or measure in relation to a procurement, which is the subject of the challenge;
 - (c) the procurement which is the subject of the challenge is a procurement which has been initiated before the commencement of this Act within the meaning of section 26;
 - (d) the applicant is not a supplier entitled to bring a challenge under section 7(3);
 - (e) the applicant did not lodge or serve the Notice of Challenge within the time prescribed by section 12(1), unless the Tribunal is satisfied that there has been no unreasonable delay on the part of the applicant; or
 - (f) the Notice of Challenge does not comply with section 12(2).

(3) For the purposes of subsection (2)(e), the Tribunal shall take into account the date the applicant became aware, or ought reasonably to have become aware, of the facts constituting the basis of the challenge, and may, in granting any permission to the applicant to proceed with the challenge, impose such conditions as it considers just on the applicant.

(4) If the applicant fails to comply with any of the conditions imposed by the Tribunal under subsection (3), the Tribunal may declare the challenge invalid.

Suspension order

16. —(1) The applicant may, at any time after he has —

- (a) lodged the Notice of Challenge with the Registrar;
- (b) paid the fee referred to in section 12(1)(b) and the deposit to the Registrar; and
- (c) served the Notice of Challenge on the relevant contracting authority,

apply to the Tribunal for an order to suspend, pending the disposal of the challenge —

- (i) the procedure leading to the award of the contract for the procurement which is the subject of the challenge; or
- (ii) the implementation of any decision made while undertaking the procedure referred to in sub-paragraph (i).

(2) The Tribunal may, in its discretion, make the order either unconditionally or upon such terms and conditions as the Tribunal thinks just.

(3) The Tribunal shall not make an order under this section if —

- (a) such suspension is against the public interest; or
- (b) the contract referred to in subsection (1)(i) has already been awarded at the date of hearing of the application for the order.

(4) If the Tribunal refuses to make an order under this section, the Tribunal shall give the reasons for its refusal in writing.

(5) Where an order under this section has been made, the contracting authority concerned may, at any time before the determination on the challenge referred to in section 18 is made, apply to the Tribunal for the order to be varied or rescinded.

(6) Subject to subsection (7), the Tribunal may, in its discretion, vary or rescind the order either unconditionally or upon such conditions as it thinks just.

(7) The Tribunal shall rescind the order if the continuance of such suspension is against the public interest.

(8) The Minister may issue a certificate that such suspension, or the continuance of such suspension, in a particular case is against the public interest, and such a certificate shall be conclusive evidence of the matters so certified.

Onus of proof, etc.

17. —(1) The onus of proving the breach of duty which is the subject of the challenge shall be on the applicant.

(2) Except with the consent of the Tribunal and in accordance with such conditions as the Tribunal may determine, the applicant may not, at the hearing of the challenge, rely on any breach of duty other than that identified in the Notice of Challenge.

Determination on challenge

18. —(1) The Tribunal shall 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.

(2) Subsection (1) shall not apply if the challenge has been disposed of under section 15.

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

- (a) 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;
- (b) 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);
- (c) order the contracting authority to amend any document pertaining to the procurement;
- (d) 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.

(4) An order made under subsection (3)(b) may specify the decision or action which the contracting authority is to make or take.

(5) Notwithstanding subsection (3), if —

- (a) the Tribunal makes a determination in favour of the applicant; and
- (b) the contract for the procurement has already been awarded,

the Tribunal may only —

- (i) make an order under subsection (3)(d); or
- (ii) if the applicant did not incur any of the costs referred to in subsection (3)(d), award the applicant the costs of the challenge proceeding in accordance with section 21.

Determination and order to be in writing

19. —(1) Every determination and order of the Tribunal shall be given in writing and shall include a statement of the Tribunal's reasons for the determination or order, as the case may be.

(2) The Registrar shall, within 7 days of the making of the determination or order, send certified copies of the determination or order to the applicant and the relevant contracting authority.

Satisfaction of order

20. —(1) A contracting authority against whom an order under section 16 or 18(3)(a), (b) or (c) is made shall comply with the order.

(2) An applicant in whose favour an order under section 18(3)(d) is made may recover the amount ordered to be paid to him by an action for a debt in any court of competent jurisdiction.

(3) This section is without prejudice to the right of the contracting authority to seek judicial review of a determination or order of the Tribunal.

Costs of challenge proceeding

21. —(1) Subject to any regulations made under this Act, the costs of any challenge proceeding, including the costs of the Tribunal, shall be at the discretion of the Tribunal.

(2) The costs may be recovered as if they were costs in a suit in the High Court and as if the determination of the Tribunal in relation to the costs were a decree made in the High Court.

Procedure and powers of Tribunal

22. —(1) Subject to the provisions of this Act and any regulations made thereunder, the Tribunal shall have the power to determine the procedure to be adopted for any challenge proceeding.

(2) The Tribunal shall have the following additional powers:

- (a) to summon to attend at any challenge proceeding any person whom it may consider able to give evidence in respect of the proceeding, to examine him as a witness either on oath or otherwise and to require him to produce such books, records or documents as the Tribunal may think necessary for the proceeding;
- (b) to allow any person so attending any reasonable expenses necessarily incurred by him in so attending;
- (c) to fix the remuneration of any expert witness appointed by the Tribunal for any challenge proceeding;
- (d) with the consent of the applicant and the relevant contracting authority, to refer the parties for mediation by such person as the parties may agree or failing such agreement, as the Tribunal may appoint;
- (e) all the powers of the Supreme Court with regard to the enforcement of attendance of witnesses, hearing evidence on oath and punishment for contempt;
- (f) to admit or reject any evidence adduced, whether oral or documentary, and whether admissible under the provisions of any written law for the time being in force relating to the admissibility of evidence;
- (g) to conduct its proceedings or any part of its proceedings in camera; and
- (h) generally to give any direction, or to do anything, necessary or expedient for the expeditious and just hearing and disposal of any challenge proceeding.

(3) The expenses referred to in subsection (2)(b) and the remuneration referred to in subsection (2)(c) shall form part of the costs of the challenge proceedings and, pending and subject to any order made by the Tribunal as to such costs, shall be paid by the applicant or the contracting authority concerned, as the Tribunal may direct.

(4) Evidence of any thing said, or of any admission made, in the course of any mediation referred to in subsection (2)(d) shall not be admissible in any proceedings before the Tribunal or any court.

(5) Where the Minister certifies that it is against the public interest for any challenge proceeding to take place in public, the Tribunal shall conduct the proceeding in camera.