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Public Procurement & Government Contracts

Singapore

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Law and Practice

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Contents

1. General	p.3	3. General Transparency Obligations	p.5
1.1 Legislation Regulating Procurement of Government Contracts	p.3	3.1 Obligation to Disclose Bidder/Tender Evaluation Methodology	p.5
1.2 Entities Subject to Procurement Regulation	p.3	3.2 Obligation to Notify Interested Parties Who Have Not Been Selected	p.5
1.3 Type of Contracts Subject to Procurement Regulation	p.3	3.3 Obligation to Notify Bidders of Contract Award Decision	p.5
1.4 Openness of Regulated Contract Award Procedure	p.3	3.4 Requirement for Standstill Period	p.6
1.5 Key Obligations	p.3	4. Review Procedures	p.6
2. Contract Award Process	p.3	4.1 Responsibility for Review of Awarding Authority's Decisions	p.6
2.1 Prior Advertisement of Regulated Contract Award Procedures	p.3	4.2 Remedies Available for Breach of Procurement Legislation	p.6
2.2 Preliminary Market Consultations by Awarding Authority	p.4	4.3 Interim Measures	p.6
2.3 Tender Procedure for Award of Contract	p.4	4.4 Challenging Awarding Authority's Decisions	p.6
2.4 Choice/Conditions of Tender Procedure	p.4	4.5 Time Limits for Challenging Decisions	p.6
2.5 Timing for Publication of Documents	p.5	4.6 Length of Proceedings	p.6
2.6 Time Limits for Receipt of Expressions of Interest or Submission of Tenders	p.5	4.7 Annual Number of Procurement Claims	p.6
2.7 Eligibility for Participation in Procurement Process	p.5	4.8 Costs Involved in Challenging Decisions	p.6
2.8 Restriction of Participation in Procurement Process	p.5	5. Miscellaneous	p.7
2.9 Evaluation Criteria	p.5	5.1 Modification of Contracts Post-award	p.7
		5.2 Direct Contract Awards	p.7
		5.3 Recent Important Court Decisions	p.7
		5.4 Legislative Amendments Under Consideration	p.7

1. General

1.1 Legislation Regulating Procurement of Government Contracts

In Singapore, the procurement of government contracts is regulated by the Government Procurement Act (Cap. 120) (“Act”). Subsidiary legislation includes the Government Procurement Regulations 2014 (“Regulations”), Government Procurement (“Application”) Order (“GP Order”), and the Government Procurement (“Challenge Proceedings”) Regulations.

1.2 Entities Subject to Procurement Regulation

The government procurement regulations apply to “contracting authorities”, which is defined under Section 2 of the Act to include any ministry or department of the government, organs of State and statutory boards. Specifically, the list of designated contracting authorities is set out in the Second Schedule of the GP Order.

1.3 Type of Contracts Subject to Procurement Regulation

Generally, the regulations apply to a contracting authority’s procurement of goods or services or a combination of goods and services by any contractual means, such as purchase or lease, rental or hire purchase, with or without an option to buy the goods or services or combination of goods and services. Specifically, these goods and services are listed in the Third Schedule, Fourth Schedule and Fifth Schedule of the GP Order.

Regulation 4 of the GP Order stipulates the minimum financial thresholds that must be met in order for an overseas procurement to be subject to the Act. The minimum financial threshold varies across the different prescribed states such as Canada, Japan, the European Union and the United States.

For local procurement, depending on the estimated value of the government procurement, the procurement method adopted by a contracting authority could be by way of a small value purchase, by way of inviting quotation, or by tender.

Small value purchases are for items of goods or services with an estimated value of up to SGD6,000. These purchases may be carried out directly by the contracting authority by buying off-the-shelf or purchasing directly from known sources.

Quotations will be invited for items of goods or services with an estimated value of up to SGD90,000. In this process, at least two officials would be responsible for the procurement; one to invite, receive and evaluate offers and make recommendation, and the other to approve the recommendation.

Tenders are used for all government procurements with an estimated value of above SGD90,000. See 2.3 **Tender Procedure for Award of Contract** for the different types of tendering procedures.

1.4 Openness of Regulated Contract Award Procedure

Government tenders are not limited to participation by Singapore entities. All suppliers, regardless of jurisdiction, are given equitable opportunities and access to compete on a level playing field. As Singapore is a party to the World Trade Organization’s Agreement on Government Procurement and several Free Trade Agreements, Singapore’s government procurement framework is aligned with international standards and obligations. It is based on the principles of fairness, transparency and value-for-money.

However, business entities wishing to bid for public sector procurement opportunities may be required to register with the relevant government registration authorities. For example, entities providing construction-related goods and services need to register with the Building and Construction Authority (BCA). Suppliers for all other goods and services may also register with CrimsonLogic Pte Ltd, a service provider appointed by the Ministry of Finance.

1.5 Key Obligations

The key obligations under the Act are the contracting authority’s duty to comply with the regulations prescribed therein. The duty is owed to the relevant suppliers in relation to a procurement. These regulations prescribe the technical specifications for a procurement, the procedure for qualification of suppliers, the procedure for the award of a contract and the provision of any information pertaining to a procurement. The regulations may also prescribe different provisions for different procurements.

The Act also stipulates the procedures to be adhered to in challenge proceedings in respect of a contracting authority’s breach of its duties. Such challenges would be brought before a Government Procurement Adjudication Tribunal consisting of the Commissioner or a Deputy Commissioner.

2. Contract Award Process

2.1 Prior Advertisement of Regulated Contract Award Procedures

All contracting authorities are to post their invitations for quotations and tenders openly on the Government electronic business portal (GeBIZ). Such invitations would typically include information on the contract award procedures.

The information that must be disclosed is as follows:

- the name and address of the contracting authority and other information necessary to contact the contracting authority and obtain all relevant documents relating to the procurement, and the cost of and terms of payment for such documents, if any;
- a description of the procurement, including the nature and quantity of the goods or services to be procured or, where the quantity is not known, the estimated quantity;
- in the case of a recurring contract, an estimate, where possible, of the timing of subsequent notices of intended procurement;
- a description of options, where applicable;
- the date of delivery of the goods, the date of performance of the service, or the duration of the contract;
- the procurement method that will be used and whether it will involve negotiation or electronic auction;
- where applicable, the address and any final date for the submission of requests for participation in the procurement;
- the address and the final date for the submission of tenders;
- the language in which a request for participation or tender is to be submitted;
- a list and brief description of the conditions for participation of suppliers, including any requirements for specific documents or certifications to be provided by suppliers in connection therewith, unless such requirements are included in the tender documentation that is made available to all interested suppliers at the same time as the notice of intended procurement;
- where a contracting authority intends to select a limited number of qualified suppliers to be invited to tender, the criteria that will be used to select them and, where applicable, any limitation on the number of suppliers that will be permitted to tender; and
- a statement that the procurement is covered by the Agreement on Government Procurement.

Also included in the invitation for quotations and tenders is the criteria to be met. Government agencies would typically have two sets of criteria, those that are critical and must be met in order for the bid to be considered for award, and those that are not critical, where suppliers who do not meet the criteria will still be considered but may be in a disadvantaged position against another supplier that meets the criteria.

Evaluations of bids are based strictly on the criteria indicated in the Tender document to ensure fairness and transparency. Contracting authorities do not change criteria or waive essential requirements or contractual terms during their evaluation.

2.2 Preliminary Market Consultations by Awarding Authority

The awarding authority is required, as part of the procurement process, to conduct market research to assess the need for procuring the goods or services, and to determine its desired outcome.

2.3 Tender Procedure for Award of Contract

Tenders are invited by using either the open, selective or limited tendering procedures. All government procurements with estimated value of above SGD90,000 must adopt tendering procedures.

- Open tender – under an open tender, all suppliers may participate by responding to tender notices. Tender notices are posted on the GeBIZ website.
- Selective tender – for a selective tender to be used, the pre-qualification of interested suppliers is carried out first, based on their capabilities, so as to exclude suppliers who do not meet the minimum requirements. Suppliers who are qualified in this process are then invited to submit tenders.
- Limited tender – in a limited tender, submissions are invited from only a few suppliers, or from one pre-qualified supplier. 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 to call for open tenders, eg, in matters involving intellectual property rights or for works of art.

A contracting authority may conduct negotiations with any supplier if the contracting authority has indicated its intent to conduct negotiations in the notice of intended procurement, or if it appears to the contracting authority that no one tender is obviously the most advantageous in terms of the evaluation criteria set out in the notice of intended procurement or tender documentation.

The contracting authority shall ensure that any elimination of suppliers from participating in the negotiations is carried out in accordance with the evaluation criteria set out in the notice of intended procurement or tender documentation and, when negotiations are concluded, provide a common deadline for the remaining participating suppliers to submit any new or revised tenders.

2.4 Choice/Conditions of Tender Procedure

The choice of tendering procedure is subject to the fulfilment of certain conditions as highlighted in **2.3 Tender Procedure for Award of Contract**.

2.5 Timing for Publication of Documents

For every procurement, except in the case of limited tendering, a contracting authority has to publish a notice of intended procurement, in an approved medium, which has to contain the information stated in **2.1 Prior Advertisement of Regulated Contract Award Procedures**.

At the same time the notice of intended procurement is published, the contracting authority must also publish a summary notice that has to be made readily accessible. The summary notice needs to contain the following information:

- the subject matter of the procurement;
- the final date for the submission of tenders or, where applicable, any final date for the submission of requests for participation in the procurement or for inclusion on a multi-use list; and
- the address from which documents relating to the procurement may be requested.

2.6 Time Limits for Receipt of Expressions of Interest or Submission of Tenders

The legislation aims to provide suppliers with a sufficient amount of time to prepare and submit their tenders unless this is inconsistent with the contracting authority's reasonable requirements. Factors that need to be taken into account when working out the time frame include the nature and complexity of the procurement and the extent of anticipated subcontracting.

At a minimum, for open tenders, the time period for submission of a tender cannot be less than 40 days from the date on which the notice of intended procurement is published in an approved medium. For selective tenders, the time period for tender submission cannot be less than 40 days from when suppliers are notified that they will be invited to submit a tender.

The 40-day time period may be reduced in certain circumstances, such as when a state of urgency renders the time frame impracticable. Nevertheless, even in such cases, the time period cannot be less than ten days.

2.7 Eligibility for Participation in Procurement Process

Apart from the registration requirements as stated in **1.4 Openness of Regulated Contract Award Procedure**, the specific criteria to be met by interested parties is set by the relevant contracting authority for their respective procurement processes.

2.8 Restriction of Participation in Procurement Process

Participation in the procurement process can be limited under the selective and limited tender procedures. The basis for this

shortlisting includes factors such as the qualifications and capabilities of the suppliers. Under the limited tender process, which is explained in **2.3 Tender Procedure for Award of Contract**, just one supplier is sufficient for the contract award procedure. However, when recommending the award of a quotation/tender based on a single bid, officers are required to justify why the single bid is considered competitive or reflective of fair market value.

2.9 Evaluation Criteria

Generally, the Singapore Government procures from sources that can best meet its requirements and which offer the best value. Value for money is derived from the optimal balance of benefits and costs on the basis of total cost of ownership. As such, value for money does not necessarily mean that a tender or quotation must be awarded to the lowest bidder. Factors such as quality, relative risk, timeliness and reliability are also taken into consideration.

3. General Transparency Obligations

3.1 Obligation to Disclose Bidder/Tender Evaluation Methodology

Information such as procurement requirements, procedures and the evaluation criteria for tenders are published openly at the start of the procurement process on GeBIZ. Tenderers are evaluated based on the criteria stipulated by the contracting authority as set out in the tender documents.

3.2 Obligation to Notify Interested Parties Who Have Not Been Selected

Generally, there is no obligation on contracting authorities to inform parties who have not been selected for participation in the contract award procedure. However, these interested parties may seek feedback from the relevant agency to increase their chances of being selected for future participation in tenders.

3.3 Obligation to Notify Bidders of Contract Award Decision

A contracting authority is required to publish a contract award notice in GeBIZ no later than 72 days after the date of the award of a procurement contract.

The notice has to contain:

- a description of the goods or services procured;
- the name and address of the contracting authority awarding the contract;
- the name and address of the supplier to whom the contract was awarded;

- the value of the contract awarded or the highest and lowest offers taken into account in the award of the contract;
- the date of the award;
- a statement as to whether open tendering, selective tendering or limited tendering was used for the procurement; and
- in the case where limited tendering was used, a description of the circumstances justifying the use of limited tendering must be provided.

In addition, a contracting authority shall, 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. Such information shall be given in writing, upon request.

Unsuccessful tenderers may seek feedback and clarification from the relevant contracting authority. The relevant contracting authority is obliged to explain the reasons behind the unsuccessful bid upon receiving a written request from the unsuccessful tenderer.

3.4 Requirement for Standstill Period

The legislation does not provide for a standstill period between the notification of the contract award decision and the conclusion of the contract.

4. Review Procedures

4.1 Responsibility for Review of Awarding Authority's Decisions

The Government Procurement Adjudication Tribunal is the body responsible for the review of the awarding authority's decisions. Generally, the Tribunal may make certain orders as allowed under the Government Procurement Act. However, in instances where the contract has been awarded, the Tribunal would not reverse the award and would instead order the contracting authority to pay costs reasonably incurred by the applicant in participating in the procurement process, as well as the costs of the challenge proceedings.

4.2 Remedies Available for Breach of Procurement Legislation

Parties would be able to seek costs reasonably incurred in participating in the procurement process. See **4.1 Responsibility for Review of Awarding Authority's Decisions**.

4.3 Interim Measures

An application to suspend a contract award procedure can be made to the Government Procurement Adjudication Tribunal. This can be done after the supplier has lodged a challenge with the Tribunal, paid the necessary deposit and served the chal-

lenge to the relevant contracting authority. An application may also be made to suspend an implementation of the decision made while undertaking the contract award procedure.

However, the Tribunal will not be able to order a suspension if it is against the public's interest to do so and/or if the contract has already been awarded at the date of hearing of the application for the order.

4.4 Challenging Awarding Authority's Decisions

Suppliers who have suffered, or reasonably risk suffering, loss or damage as a result of a breach by an awarding authority, may seek recourse or challenge the awarding authority's decisions.

They may refer the matter to the Government Procurement Adjudication Tribunal, but only if the tender is covered under the Government Procurement Act and if all other avenues, including addressing concerns with the relevant awarding authority, have been exhausted.

4.5 Time Limits for Challenging Decisions

Section 12(1) of the Act requires a challenge before the Tribunal to be submitted within 15 days from the date the facts constituting the basis of the challenge first took place.

4.6 Length of Proceedings

The Tribunal is required to issue its determination on a challenge within 45 days from the date that the notice of a challenge is lodged by the applicant. However, for cases where there are exceptional circumstances, there may be an extension of time required before the Tribunal makes its determination.

4.7 Annual Number of Procurement Claims

At the time of writing, there appears to be no published information on the number of procurement claims considered by the Tribunal. It is likely that the number of procurement claims is low given the requirements and practices in place to ensure transparency, openness and fair competition.

4.8 Costs Involved in Challenging Decisions

The costs involved in challenging a decision vary, and are at the discretion of the Tribunal. At the time of the lodgement of the notice of challenge, the applicant will be required to deposit a prescribed sum that shall be used by the Registrar to pay any costs awarded by the Tribunal to the contracting authority concerned.

If the deposit is insufficient to cover the costs, the contracting authority may recover the balance amount from the applicant. Should the challenge be disposed of by the Tribunal, and if there are no outstanding claims for costs by the contracting authority concerned against the applicant, the deposit or its balance amounts will be released to the applicant.

5. Miscellaneous

5.1 Modification of Contracts Post-award

The existing legislation does not provide for the modification of contracts after award. Typically, contracting authorities would not amend the contract following award, unless there are extenuating circumstances to do so.

5.2 Direct Contract Awards

The existing legislation does not provide for direct contract awards. However, Section 5(1) of the Government Procurement Act allows the Minister to issue a certificate certifying that a particular procurement is not subject to the Act. Such an exemption, if granted, would thus allow for a direct contract to be awarded.

5.3 Recent Important Court Decisions

There has been no reported court decisions in respect of government procurements in 2019.

5.4 Legislative Amendments Under Consideration

At the time of writing, there are no legislative amendments currently being considered in respect of government procurement.

WongPartnership LLP is an award-winning law firm and one of the largest in the country. With offices in Beijing, Shanghai and Yangon, as well as in Abu Dhabi, Dubai, Jakarta, Kuala Lumpur and Manila, through member firms of WPG, a regional law network, WongPartnership is a leading provider of legal services in ASEAN, China and the Middle East. Together,

WPG offers the expertise of over 400 professionals to meet the needs of clients throughout the region. The firm's expertise spans the full suite of legal services to include both advisory and transactional and the firm has been involved in landmark corporate transactions, as well as complex and high-profile litigation and arbitration matters.

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