
Contracting by MINDEF and DSTA –
Understanding the **Law and
Practice of Defence
Procurement** in Singapore

ABSTRACT

Defence procurement in Singapore is a highly regulated discipline. A myriad of laws, rules and regulations permeate the entire process from the initial conceptualisation of a military requirement by the Singapore Armed Forces through to the final contracting mechanism adopted by the Ministry of Defence and its central procurement arm, DSTA. This article seeks to alleviate the dearth of literature on the subject by affording some insight into the applicable laws and practices, which impact the workings of MINDEF and DSTA's defence procurement system. It begins by illuminating the rationale for regulating the procurement regime in the first place, and then seeks to shed some light on the procedural framework and operative concepts governing the law and practice of defence procurement in Singapore. Selected issues frequently encountered in practice by both purchasing authorities and prospective contractors alike would also be highlighted. It is hoped that the concepts and principles revealed in this article will go a long way towards helping the parties involved in any form of contracting by MINDEF and DSTA gain a better understanding of the law and practice relating to the defence procurement process in Singapore.

 Kow Keng Wee

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WHAT IS PROCUREMENT?

Every government has a need to acquire goods and services to sustain a variety of municipal functions and activities. The complexities of modern governance demand that a wide range of goods and services be procured for this purpose. Invariably, the Government obtains those goods and services by contracting with private sector suppliers. The Government could do so either in its capacity as an agent of the state, or through organs such as departments and ministries, or state-owned corporations set up specifically for the purposes of acquiring goods and services to meet the needs of the state. The processes involved in the acquisition are generally referred to as procurement.

DEFENCE PROCUREMENT

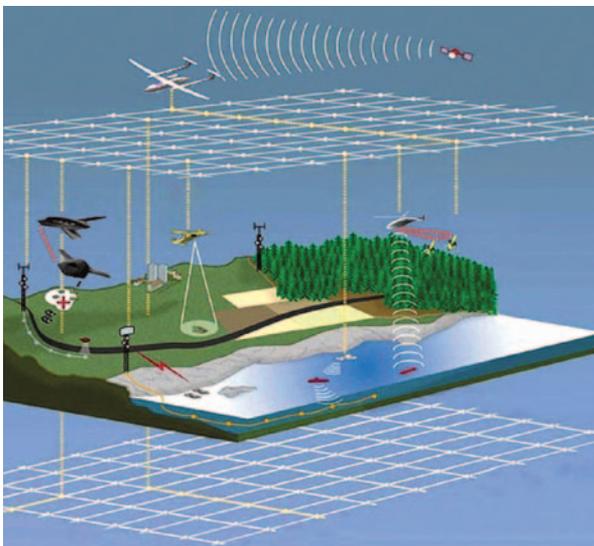
Similarly, the Government would have to procure goods and services from the private sector to meet the defence needs of the state. The processes involved in this particular form of acquisition are more specifically referred to as defence procurement¹. Here, the goods that may be needed include aircraft, tanks, warships, weapons, and other military equipment. The services required could range from the transportation and warehousing of the goods themselves, research and

development, and materiel maintenance, to incidentals such as insurance, legal and technical consultancy services.

The list is obviously not closed. Given the intricacies of modern warfare, the range of goods and services that a state might possibly need for its defence can never be exhaustive. Indeed, much would also depend on the purchasing power of individual states and the size of their defence budgets.

CONTRACTING BY THE MINISTRY OF DEFENCE

In Singapore, all defence-related matters – including defence procurement – fall within the purview of its Ministry of Defence (MINDEF). Most of the procurement functions undertaken by MINDEF involve exacting regulatory measures designed to ensure the efficiency and integrity of the system. When MINDEF engages in defence procurement, much effort goes into the processes of sourcing, tendering and contracting for the required goods and services at all levels. The myriad of regulatory policies and practices involved in the defence procurement process is often a source of disconcertment for suppliers and service providers alike. The prospective contractor may also find himself ensnared in the nuances of the standard form procurement contract which MINDEF uses for all of its purchases². These ‘difficulties’ are compounded for the overseas contractor, given that much of the law governing defence procurement in Singapore is anchored in her domestic law



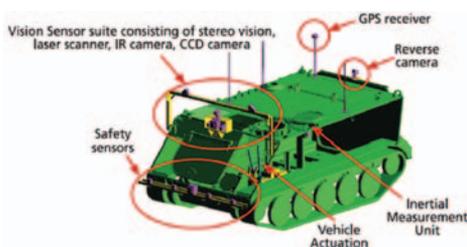
The future unmanned battlefield. *The increasing demand and reliance on unmanned air vehicles (UAV) in warfighting and peacekeeping operations have doubled the pace of UAV-related research and development in recent years, as well as the procurement and acquisition of such complex defence capabilities.*

of contract and of sale, which is further supplemented (or modified) by local legislation, regulations and directives. The overseas contractor, and perhaps, even certain local ones, may not be fully aware or cognizant of these.

It is therefore important for all parties involved in the defence procurement process to have at least a working knowledge of the law in this area. This would include persons in the defence and local industries (i.e. the contractors) who have a direct interest in the various aspects of a MINDEF procurement exercise such as the preparation and submission of tenders and other documents, and the execution of the procurement contract itself. The knowledge would also be important to the procurement entities within MINDEF, such as the Decentralised Procurement Agencies, the Project Management Teams and the Procurement Division within DSTA, as they are directly responsible for contract preparations, pricings and risks, pre-qualification and identification of contractors, as well as the evaluation of tenders received and the subsequent contract award. The knowledge thus acquired could help translate the intricacies of the defence procurement process into a more meaningful exercise for both contractors and purchasing authorities alike. In turn, an intelligible defence procurement regime lends support to creating a level playing field for the parties involved, thereby promoting an arena of transparency, fair competition and non-discrimination in all forms of contracting by MINDEF.

THE NEED TO REGULATE DEFENCE PROCUREMENT

The starting point in any discourse on the law and practice relating to defence procurement is to understand why the regime is such a regulated discipline in the first place. As stated earlier, defence procurement refers to the process of acquiring goods and services to meet the defence needs of a state. It entails the contracting from private sector suppliers by public procuring entities on behalf of the



The M113 and its robotic equivalent.

The defence procurement process has led to the development of the Autonomous Unmanned Ground Vehicle – itself a modification of the similarly acquired M113 Armoured Personnel Carrier – with capabilities such as remote control, autonomous waypoint seeking, obstacle avoidance, road following and vehicle following.

Government. As such, public funds are inevitably involved in the process, of which a country's taxpayers' contributions are the principal source. It therefore becomes imperative that governments secure the best value for money in the goods and services that they procure, and on the best possible terms. This is commonly referred to as the "best terms" ideal of the defence procurement process³. Any lesser treatment of this imperative could result in waste, either of a government's precious resource, or, in the specific context of defence procurement, a compromise in its overall defence capability and operational readiness.

For this reason, the defence procurement regimes of most governments – including Singapore's – are subject to extensive regulatory policies and practices. These policies and practices ensure the efficiency of the procurement process, and that the needs and expectations of the Government are addressed

in a timely, adequate and cost-effective manner. Typically, these objectives are met by adopting (i) an open and transparent tendering system and approval process; (ii) a systematic procedure for awarding contracts; (iii) an avenue to challenge and review those approval and award processes; and (iv) an elaborate scheme of checks and balances to ensure that these measures are adopted and enforced. The transparency of the system instils contractor-confidence in the integrity of the procurement process. Such a system gives assurance to all who respond to the Government's call for goods and services that their tender proposals would be evaluated fairly and on their merits. This would, in turn, encourage potential suppliers and service providers to participate competitively in any defence procurement exercise. The competition thus generated facilitates the Government's efforts to secure the best deal available in the market.

THE DEFENCE PROCUREMENT REGIME IN SINGAPORE

Operative Concept

Given the benefits of regulating procurement, Singapore, too, has adopted such policies and practices in her defence procurement regime. Singapore is also bound by international law to do so by virtue of her accession to the 1994 Agreement on Government Procurement of the World Trade Organisation. That Agreement codifies the rules on access to public procurement, and applies to states which have acceded to it. The aim is to liberalise trade among member states and free their procurement markets from discriminatory, anti-competitive practices. On their part, the state parties would agree on the Government's procuring entities to which the provisions of the Agreement will apply. Singapore is a party to the Agreement; and MINDEF, an entity covered thereunder.

For these reasons, the defence procurement regime in Singapore is aligned and operated against an open economy that is plugged into



The Apache Longbow (AH-64D) Attack Helicopter. *The SAF acquired the Apache Longbow AH-64D attack helicopters from Boeing through DSTA, as part of its defence procurement programme.*

the global market system⁴. Such an operational framework, with its attendant open market concept, lends support to creating a level-playing field for the parties involved in the procurement process, thereby enabling MINDEF to make its purchases on "best terms".

Procedural Framework

A structured and disciplined procedural framework is necessary to further the operative concept. Typically, such a procedural framework involves the interplay between two distinct considerations and three key players⁵.

The first consideration relates to the conceptualisation of an operational need. It is up to the armed services of the state to specify the military capabilities and materiel that it requires to counter any perceived threat. Once identified, these needs are communicated to the defence ministry or department of the state, or its designated procurement arm, to set in train the procurement process. The local defence industry or an appointed overseas industrial supplier is then tasked to realise the military needs of the armed services.

The second consideration relates to the defence procurement contracting mechanism itself, and the need to find that contract on "best terms".

Both these considerations are manifested in Singapore's defence procurement regime. MINDEF – as part of the Westminster ministerial

Understanding the Law and Practice of Defence Procurement in Singapore

model of governance which Singapore has adopted in her parliamentary system – is charged with the responsibility of defence procurement. The Singapore Armed Forces (SAF) constitutes the military arm of MINDEF. It comprises the armed services (namely, the Army, Navy and Air Force) where defence needs are identified and written submissions for their acquisition are staffed to appropriate levels within MINDEF. There, the submissions undergo an extensive evaluation on their merits, prioritisation and budgeting before approval is finally given for those needs to be procured. The approved submissions are then channelled to the Procurement Division within DSTA – the central procurement arm of MINDEF – for the purpose of acquisition⁶.

Acquisition Process

The conceptualisation of a new military requirement by the SAF constitutes the primary stage in the acquisition process. It paves the way for MINDEF to determine the mode of acquisition; either by way of an upgrade of an existing equipment, or the purchase or development of a new defence capability altogether. The nature of that military requirement itself influences the choice of procurement approach to be adopted by DSTA with regard to its acquisition.

DSTA's procurement policy follows the international norm of encouraging competition to secure the best deal that the market can offer. To this end, two main procurement methods are used. These are the Invitation-to-Quote (ITQ) and Invitation-to-Tender (ITT). The ITQ is commonly used for low-value requirements while the ITT is catered for higher-end purchases⁷.

In the ITQ, the sourcing of at least three quotes is encouraged so that the most cost-effective method of meeting the SAF's requirements may be uncovered.

In the ITT, three types of tenders are devised to find the acquisition on "best terms". These are the Open Tender, the Limited Tender and the Selective Tender. The Open Tender is

available to all who can meet the specified requirements⁸. Limited Tenders, on the other hand, serve to restrict competition in the procurement process by limiting participation to selected suppliers only. The Limited Tender is used mainly for security reasons; often where the SAF's requirements have been deemed classified such that the same may not be disclosed freely through an Open Tender⁹. A Selective Tender is one in which only a pre-determined group of suppliers who have fulfilled certain qualifying criteria set by DSTA are allowed to participate. These criteria include technical expertise, experience, and overall ability to meet the operational needs and demands of the SAF. This mode of procurement represents a deviation from the traditional tendering process, and is justified by the complexity or sensitivity of the acquisition at stake.

The tender proposals which have been received pursuant to any of the three types of tenders are then evaluated extensively through the Analytical Hierarchical Process. In this process, all aspects of the tender proposal – technical, financial, commercial, performance and life cycle costs¹⁰ – are assessed, and the most cost effective proposal, awarded the contract.

Apart from the ITQ and ITT, other procurement methods exist. These include the "Direct Purchase" (where the prospective supplier, whose price of goods or services is already known, is approached directly); the "Reverse Auction" (where prospective suppliers engage



The F-16 fighter aircraft. As part of its defence procurement programme, Lockheed Martin was engaged by MINDEF, through DSTA, to provide the F-16 fighter aircraft to boost the operational capabilities of the Republic of Singapore Air Force.

in an open online bidding process over the Internet in real-time and with price visibility); and the "Request for Proposals" (which is used if prospective suppliers have not been responsive to the tendering procedures of the ITT). An IT system known as the "Government eBusiness portal", or GeBIZ, where bids by prospective suppliers are submitted online, has also been implemented to facilitate the ITQ and ITT.

As MINDEF's central procuring authority, DSTA is charged with the responsibility of managing the entire defence procurement process from its conception to the conclusion of the procurement contract, as well as any post-contractual management thereof. To this end, DSTA employs a "risk management" framework to address the areas of treasury, investment, project management and technical assessment during the course of the procurement process. The "risk management" framework is entrenched in the DSTA Code of Corporate Governance. It is essentially an enterprise-wide approach to enable DSTA in identifying the risks involved at each stage of the acquisition, thereby facilitating the necessary controls to be put in place throughout the procurement process. In a way, the framework could be discerned as yet another means of ensuring that any form of contracting by MINDEF is indeed founded upon "best terms".

THE LAW ON DEFENCE PROCUREMENT IN SINGAPORE

Overview

In essence, defence procurement is an exercise of a state's purchasing functions. When MINDEF contracts through DSTA for its defence needs in an open and competitive environment as the one described earlier, the process is almost akin to an ordinary arm's length sales transaction. Such a transaction is one which is devoid of any undue influence or control exerted by one party over the other, and in which both have acted independently in



As the central procurement arm of MINDEF, DSTA acquired and retrofitted four ex-Sjoormen class submarines from Sweden. The submarines were delivered between 2000 and 2004.

arriving at their agreed terms¹¹. As is in the nature of such arm's length transactions, the procurement contract which is eventually awarded at the conclusion of the acquisition exercise is governed principally by the private law of obligations (i.e. that of contract and of sale) as in any other commercial contract between private persons.

Private Law of Obligations

In Singapore, the private law of obligations is fundamentally contract-based. For historical reasons, the Singapore law of contract is inspired by English common law principles and equity¹². That law is, in turn, founded upon precedents established by superior court decisions, or case law.

One of the reasons why parties seek to enter into contractual relations in the first place is that the contract is capable of creating binding obligations which are enforceable at law. Contracting is therefore acknowledged as an important aspect of the procurement process in that it facilitates acquisition planning, secures the purchasing authority's expectations, and assists in setting out obligations for the supplier or service provider to adhere to. Where all the requirements to constitute a valid procurement contract are present, the parties are entitled to assume that their expectations will be sanctioned by the courts. What, then, are these requirements? Firstly, a valid contract must be premised upon an offer by the contractor which is capable of being converted into a

Understanding the Law and Practice of Defence Procurement in Singapore

binding obligation by the authority's acceptance. It is then essential that such offer and acceptance be supported by valuable consideration; the latter invariably being the price of the goods or services in question. As the goods and services themselves are inevitably of a routine, generic or recurrent nature, standard form contracts are commonly used by DSTA to effect most of MINDEF's purchases. Those standard forms would have encapsulated the requirements necessary to find a valid contract. For this reason, issues relating to the want of offer, acceptance or consideration hardly arise in the usual course of MINDEF or DSTA's procurement practice.

While it has been submitted that procurement contracts are generally analogous to commercial transactions between private persons, one crucial difference is to be discerned. A contract in furtherance of defence procurement is distinguishable from routine, commercial ones in that a public authority (i.e. MINDEF), and hence, public interests are involved. Additional laws are therefore needed to safeguard those interests. The private law of obligations is therefore not the only source of law governing defence procurement or its resultant contract. That law is complemented by other sources such as local legislation, regulations, directives, and standard form clauses.

Legislation

Statutes are written laws enacted by the Parliament of Singapore. In contrast to case law (described earlier), statutes form the primary sources of law in the country. Several such statutes directly impact the defence procurement process in Singapore.

In the first place, the Singapore Government is empowered to enter into contracts by virtue of Article 37(1) of the Constitution¹³. The legislative framework for defence procurement is then prescribed by the Government Contracts Act¹⁴. The Act sets out the contracting formalities, which the parties would have to adhere to in order that the Government be bound by the contract. Hence, for a written

procurement contract made in Singapore for the Government, it would have to "be made in the name of the Government and... signed by a Minister or by any public officer¹⁵ duly authorised in writing by the Minister for Finance, either specially in any particular case, or generally for all contracts below a certain value in his Ministry or department"¹⁶. The Act further provides that the Government would not be bound by a contract which does not conform to these formalities¹⁷.

For expediency, DSTA uses standard form contracts to effect most of MINDEF's defence procurement. The clauses therein take into account the statutory provisions which are necessary for the contracts' legal effectiveness. For example, the formality that the contract "be made in the name of the Government" is reflected by the words used in the recitals¹⁸ and signature blocks¹⁹ of those standard forms. Similarly, the fact that MINDEF is only executing the defence procurement contract on behalf of the Government is documented at the head of those contracts, where the names and identifying details of each of the parties thereto are set out.

In connection with the other requirement that the contract be signed by a Minister or a duly authorised public officer, a subsidiary legislation – the Government Contracts (Authorisation) Notification – is issued. That Notification, which can be amended from time to time, lists the



As part of its defence procurement programme, MINDEF signed a contract with Direction des Constructions Navales of France to deliver six frigates to Singapore, to boost the operational capabilities of the Republic of Singapore Navy.



The Leopard 2A6, with the new Rheinmetall 120mm L55 gun. *The Leopard tank is an acquisition by DSTA on behalf of MINDEF as part of its defence procurement. (Photo: Krauss-Maffei Wegmann GmbH)*

public officers who are authorised by the Minister for Finance to sign Government contracts²⁰. It is believed that this promotes accountability and financial integrity where public funds are put to such contracts. Under the Notification, the authorisation to sign contracts which bind the Government is based on the dollar value of the contract in question and the relative standing of the public officer whose purview that contract falls within. As the value of the contract increases, so does the standing (or appointment) of the public officer who is authorised to sign it. By so listing, the Notification has severely restricted the authority and ability of public officers and other agents to bind the Government. In a way, this acts as an added check in the acquisition process so as to ensure that only informed, authorised officers may sign off such legally enforceable procurement contracts.

Apart from the above legislative provisions, the Singapore Government has not enacted any other statute of direct relevance to defence procurement. However, other written laws exist, and these may indirectly influence the procurement process as well as the resultant contract²¹.

While no other procurement-specific statute has been enacted, a directive – known as Instruction Manual No. 3 (IM3) – is promulgated

to deal with the requisition of stores, works and services by Ministries, Departments, Organs of State and Statutory Boards²². This directive, as with others in the series, deal with aspects of public administration²³. In particular, IM3 “lays down procedures for Ministries and Departments to obtain goods, services and construction services either on their own or through the procurement authorities performing centralised functions”²⁴. Though not having the force of law, the instructions contained in the Manual are strictly adhered to by all of the Government’s contract administrators, who deal with the subject matters addressed therein. MINDEF, DSTA and the rest of the procurement entities naturally subscribe to these instructions.

DEFENCE PROCUREMENT IN PRACTICE

The defence procurement regime in Singapore is primarily modelled on a platform which supports the acquisition at the lowest costs and in the most efficient manner. The operational framework of the procurement process is similarly geared towards the pursuit of this, the “best terms” ideal.

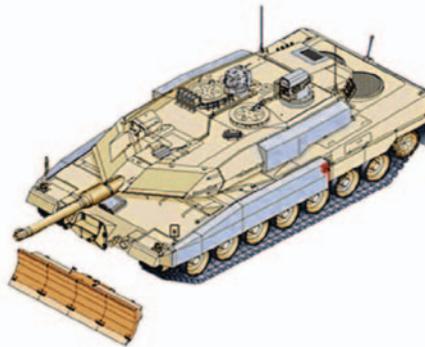
That said, defence procurement has also been used in practice to advance certain national objectives²⁵. Often, states use the acquisition process as a front to further their economic²⁶, industrial²⁷ and social²⁸ aspirations. When opened exclusively to foreign participation, the process can also be used to champion such political goals as international co-operation, collaboration and understanding among friendly nations²⁹. Admittedly, the pursuit of these objectives – commonly referred to as the secondary policies of procurement – may not be consonant with the principles of fair competition, transparency and non-discrimination in the procurement process.

On occasion, Singapore, too, has felt the need to depart from the “best terms” ideal in order to pursue secondary policies of national security

Understanding the Law and Practice of Defence Procurement in Singapore

through her procurement activities. This inevitably leads to an erosion of the traditional framework which accompanies a typical procurement process. However, in the context of defence procurement, this appears to be entirely permissible, both at law and in practice. Although the procurement regime in Singapore is procedurally influenced by the provisions of the 1994 WTO's Agreement on Government Procurement, Singapore may still choose to do that "which it considers necessary for the protection of its essential security interests relating to the procurement of arms, ammunition or war materials, or to procurement indispensable for national security or for national defence purposes"³⁰. This "concession" of the WTO is in recognition of the peculiarities of defence procurement practice. It is in this area that political sensitivities abound. Chief among these are those of national interests and security. For instance, the reality of defence procurement invariably demands that the nature of the goods and services to be acquired, or anything which might otherwise reveal the military might of the procuring government in question, be kept confidential³¹. Strategic concerns may also influence a state's choice of contractor in an international defence procurement, or require its participants to be restricted, pre-determined, or otherwise hailing from a particular region or state³². Further, in times of war and emergency, compulsory acquisition of goods (usually immovables) and services by the state may have to be exercised to meet its exigencies of defence³³. All these considerations call for a dispensation of the traditional public procurement framework, especially those relating to the transparency of process³⁴. Prospective defence contractors should therefore not assume that all of MINDEF's contracting requirements shall be met only through "open" tendering procedures: the other procurement approaches enunciated earlier in this article³⁵ are readily engaged by MINDEF (or DSTA) as part of their acquisition exercises too.

In so far as the resultant procurement contract is concerned, there are departures from established legal principles to be discerned as well. It has already been highlighted earlier in this article that the Government Contracts (Authorisation) Notification and its enabling Government Contracts Act preclude non-authorised officers from signing contracts which bind the Government. This represents a modification of the traditional common law concepts of agency and apparent authority³⁶. Effectively, this means that prospective contractors can no longer rely on the ostensible authority that a Government agent has to conclude the contract; neither can they simply rely on the signatures of such agents on contracts to bind the Government.



The LEOPARD 2 for Peace Support Operations, and its robotic/plan equivalent. (Photo: Krauss-Maffei Wegmann GmbH)

CONCLUSION

The defence procurement regime in Singapore is very much shaped by her history and geopolitical landscape. Given the rising threat of terrorism in the region, the main objective of defence procurement within MINDEF and in Singapore has been the build-up of a sufficiently credible military force to deter aggression. To this end, the acquisition of high-performance and technologically superior military equipment features significantly in MINDEF and DSTA's procurement agenda.

While it has been universally recognised that an open and transparent procurement system is fundamental in enabling states to find their purchases on "best terms", it is also acknowledged that derogations from such operative frameworks are inevitable in defence procurement. Indeed, the trend in most international systems has been the inclination towards "selective" (as opposed to "open") tendering procedures and other variants in the acquisition process. Most forms of contracting by MINDEF are similarly based upon this premise. This is to be expected as the complexity of modern warfare, and hence, the materiel needed, increases in complexity. A flexible and 'informed' defence procurement regime – such as the one adopted in Singapore – is to be lauded as MINDEF and DSTA increasingly depart from ordinary off-the-shelf purchases to technology transfers and collaborations to satisfy most of the operational and military needs of the armed services³⁷.

ENDNOTES

¹ Defence procurement is actually part of the wider notion of public procurement, which is "...the acquisition by public procuring entities of goods, construction, and services from private sector suppliers" – Campell (editor), *International Public Procurement* (Dobbs Ferry, N.Y.: Oceana Publishing) (2000).

² Standard form contracts are "uniform documents which must be accepted by all who deal with large-scale organisations", such as the government: Phang, Cheshire, Fifoot and Furmston's *Law of Contract: Second Singapore and Malaysia Edition* (Singapore: Butterworths Asia) (1998), p 74.

³ Arrowsmith, Linarelli and Wallace, *Regulating Public Procurement* (The Hague: Kluwer Law International) (2000)

⁴ See the keynote address, *Defence Acquisition and Procurement in the New Economy*, delivered by Mr. Peter Ho (then Permanent Secretary (Defence), MINDEF) at the 3rd International Acquisition/Procurement Seminar – Pacific, held on 18 Sep 2000 in Singapore.

⁵ See, generally, Kiely, *Defence Procurement: The Equipment Buying Process* (London: Tri-Service Press) (1990).

⁶ DSTA is a statutory board, so-called because it is established pursuant to a specific statute, the Defence Science & Technology Agency Act (Cap. 75A, 2001 Rev Ed). DSTA is empowered by section 7(1)(a) of the Act to take the charge in defence procurement matters by, *inter alia*, "...enter[ing] into contracts for itself or the Government for defence systems, facilities, technology, equipment, materials or services or for the execution of works or any other contract...".

⁷ A yardstick, called the Estimated Procurement Value (EPV), is used to gauge which of the two procurement approaches is to be adopted. The EPV refers to the total estimated costs involved in addressing the SAF's needs. Generally, the

Understanding the Law and Practice of Defence Procurement in Singapore

ITQ is used for purchases where the EPV does not exceed S\$70,000. Beyond that amount, the ITT is used.

⁸ In an Open Tender, these requirements are published in the local press, or on GeBiz – the internet portal – at <http://www.gebiz.gov.sg> for the conduct of business between suppliers and the Singapore government electronically.

⁹ Such reasons are unique to defence procurement (as opposed to public procurement), and are examined under the section, “Defence Procurement in Practice”, in a later part of this article.

¹⁰ In the context of procurement, “life cycle costs” relate to those which are needed to operate and maintain the acquired system from its acquisition to its decommission.

¹¹ Ipp and Weerasooria (editors), *Butterworths Business and Law Dictionary* (Sydney: Butterworths) (1997).

¹² See, generally, Phang, Cheshire, Fifoot and Furmston’s *Law of Contract: Second Singapore and Malaysia Edition* (Singapore: Butterworths Asia) (1998), Chapter 1.

¹³ The Constitution of the Republic of Singapore, 1999 Rev Ed. Article 37(1) simply provides that “[t]he Government shall have the power to...make contracts”.

¹⁴ Cap. 118, 1985 Rev Ed.

¹⁵ “Public officer” is defined by section 2(1) of the Interpretation Act (Cap. 1, 2002 Rev Ed) as “the holder of any office of emolument in the service of the Government”.

¹⁶ Section 2(1), Government Contracts Act (Cap. 118, 1985 Rev Ed).

¹⁷ Section 4, Government Contracts Act (Cap. 118, 1985 Rev Ed).

¹⁸ Recitals are paragraphs in a contract which set out the background to the transaction and the purpose for which the parties are entering into it. Typically, a standard form procurement

contract would bear the following recital: “This contract is made the ____ day of 2008 between the Government of the Republic of Singapore (“the Government”) of the one part and _____ (“the Contractor”) of the other part.”

¹⁹ Signature blocks are those parts in a contract where the parties indicate their assent to the agreement. The signature block of a standard form procurement contract typically reads: “Signed by _____ (name and designation), for and on behalf of the Government of the Republic of Singapore, in the presence of: _____.”

²⁰ Section 2(2) of the Government Contracts Act (Cap. 118, 1985 Rev Ed) provides that “[i]n making an authorisation under subsection (1), it shall be sufficient for the Minister for Finance to name the office held by such public officer and the Minister may cause the authorisation to be published in the Gazette”.

²¹ These written laws include but are not limited to the Unfair Contract Terms Act (Cap. 396, 1994 Rev Ed), Contracts (Rights of Third Parties) Act (Cap. 53B, 2002 Rev Ed), Copyright Act (Cap. 63, 1999 Rev Ed), Patents Act (Cap. 221, 2002 Rev Ed), Electronic Transactions Act (Cap. 88, 1999 Rev Ed, in relation to procurement transacted over GeBiz) and Income Tax Act (Cap. 134, 2004 Rev Ed, on the Agency’s need to withhold tax from non-resident contractors). For obvious reasons, the Sale of Goods Act (Cap. 393, 1999 Rev Ed) would also be highly relevant. An exposition of all these statutes would be outside the ambit of this article.

²² Collectively, these entities are known as Government Procuring Entities (GPEs): IM3(B)(1).

²³ The other Instruction Manuals deal with Finance and Accounts, Staff, Office Management, Daily Rated Employees, Government Marine Craft, and Information Technology.

²⁴ IM3(A)(1). Generally, these procedures relate to the adoption of the principles of transparency, value for money, and open and

fair competition in Government procurement; principles of which have already been addressed elsewhere in this article.

²⁵ Arrowsmith, Linarelli and Wallace, *Regulating Public Procurement* (The Hague: Kluwer Law International) (2000), Chapter 5.

²⁶ To generate employment or promote technology.

²⁷ To support the local industries against competitive imports, as in the protectionist 1933 Buy American Act (41 USC section 10) of the United States legislative enactment which prescribes that only American products be acquired for the purposes of public procurement.

²⁸ To assist small businesses, or those owned by disadvantaged groups, to compete for government contracts.

²⁹ This is mainly achieved through research programmes, technology transfers and other developmental projects with foreign defence industries.

³⁰ Article XXIII.1, Agreement on Government Procurement.

³¹ Usually, these relate to 'complex' weapons systems such as missiles, unconventional firearms and hard-defence materiel and armament.

³² In these cases, it is in the public interest to limit competition in the defence procurement process.

³³ In Singapore, the Requisition of Resources Act (Cap. 273, 1985 Rev Ed) provides "for the requisition of resources for defence and other purposes; and [provides] for the payment of compensation in respect of the exercise of the powers conferred by this Act and for matters connected therewith".

³⁴ The WTO recognises this; hence, the said Article XXIII.1 of the Agreement on Government Procurement referred to in the accompanying text to endnote #30 of this article.

³⁵ Under the heading "Acquisition Process".

³⁶ Simply put, apparent authority is the authority of an agent as it appears to others. An aspect of agency law, the doctrine of apparent authority is used to bind a principal to the actions of a person whom that principal has represented or allowed to represent as having the authority to act on his behalf: *Freeman & Lockyer v Buckhurst Park Properties Ltd* [1964] 1 All E.R. 630.

³⁷ In his keynote address at Asian Aerospace 2002, "New Developments in DSTA Acquisition and Procurement", on 27 Feb 2002, Professor Su Guanqing (then Chief Executive, DSTA) reiterated that the Agency can "[n]o longer...meet [the armed services'] needs with primarily off-the-shelf purchases", and that there is now "a strong need for technology collaboration in developing the systems and equipment, as well as a strong need for technology transfer in setting up support infrastructure" (emphasis added).

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Contracting by MINDEF and DSTA –
Understanding the **Law and Practice**
of Defence Procurement in Singapore

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