

Establishment of DAPA Defense Acquisition Program Supervision Bureau

Amid public criticism of the failure to deploy the “Tongyeong”, the first Korean-made state-of-the-art salvage and rescue ship, to the rescue mission when the Sewol ferry sank, investigations into alleged corruption in the supply of parts for the Tongyeong began in 2014. Then, as such corruption allegations were proved true, leading to growing criticism about widespread corruption across the defense industry, the government formed a joint investigation team to investigate corruption charges in the defense industry. Consisting of four teams totaling 105 investigators (composed of prosecutors, policemen, and other specialists), the joint investigation team was established under the anti-corruption special investigation division of the anti-corruption department at the Supreme Prosecutors’ Office, with its office at the Seoul Central District Prosecutors’ Office, on November 21, 2014. Based on the results of the investigations of the joint investigation team, the government announced on October 29, 2015 that it would establish a defense acquisition program supervision bureau, tasked with permanent monitoring to eliminate corruption in the defense industry. The new bureau within the Defense Acquisition Program Administration (DAPA) will employ investigation/inspection specialists with legal expertise to perform duties including project verification/investigation, prevention of corruption, legal support and litigation procedures under an open recruitment system. Then, as a follow-up action, the government reorganized the DAPA and the agencies under its control as of December 31, 2015 to establish the Defense Acquisition Program Supervision Bureau, which we will examine below.

1. Existing Legal Organization: “Regulatory Reform and Legal Affairs Division”

Under Article 8 of the Defense Acquisition Program Act, the primary duty of the Regulatory Reform and Legal Affairs Division of the DAPA was to review major legal issues and proceed with litigation to prevent financial losses to the State’s budget.

Members of the Regulatory Reform and Legal Affairs Division were appointed as contract-based deputy commissioners under an open recruitment system and reported to the Planning &

Coordination Bureau under the DAPA Vice Minister. The Regulatory Reform and Legal Affairs Division consisted of 24 experts including lawyers, patent lawyers and military judicial officers and five administrative officials who performed duties under categories including aircraft, warship, mobile firepower, command/reconnaissance, guided weapon and military force operation.

2. New: “Defense Acquisition Program Supervision Bureau”

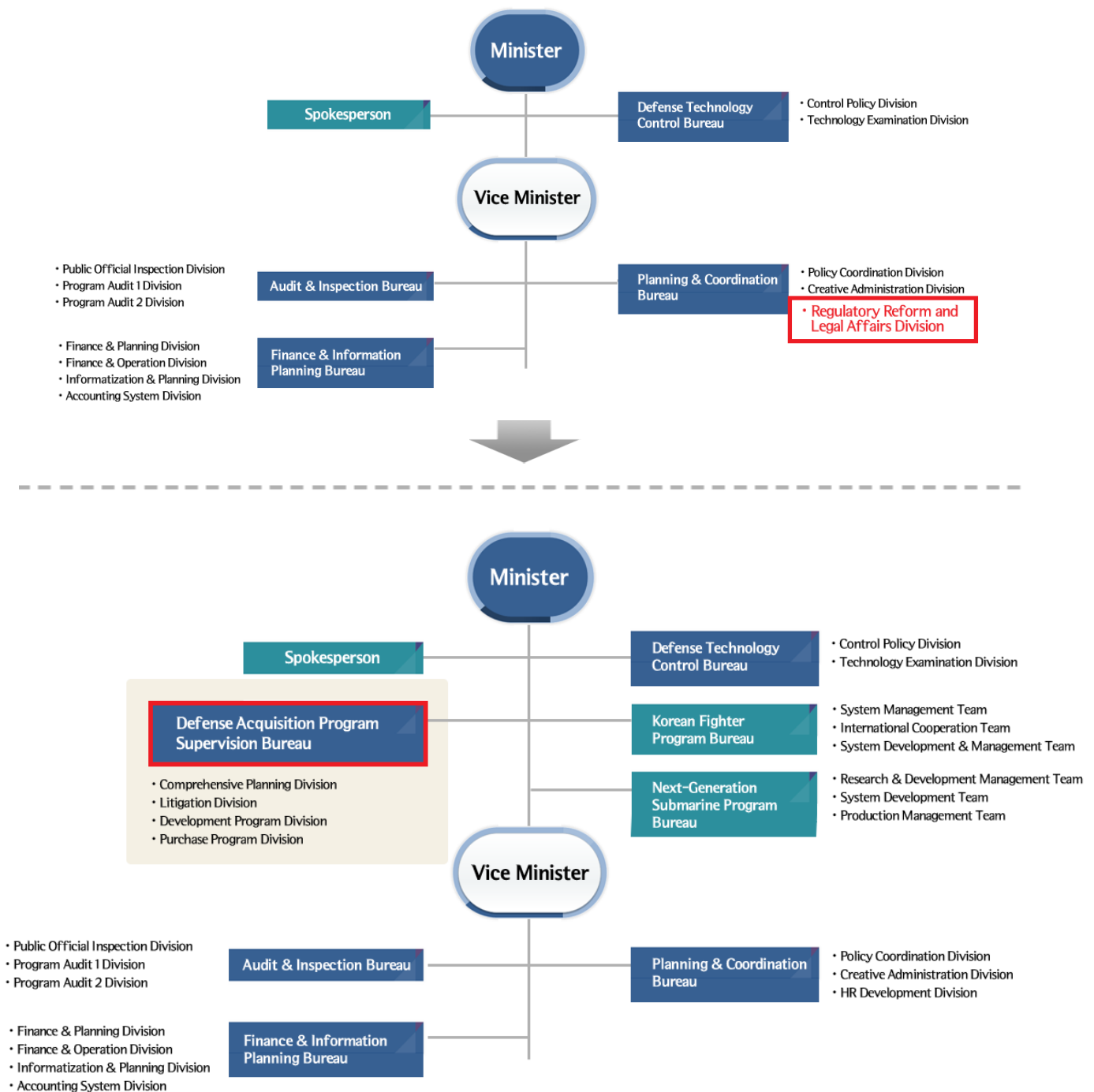
The purpose of the new Defense Acquisition Program Supervision Bureau (DAPSB) is to prevent corruption in defense acquisition programs by adding functions similar to that of the US Defense Contract Audit Agency (DCAA) to the existing DAPA legal organization through the establishment of three new divisions of (Comprehensive Planning Division, Development Program Division and Purchase Program Division) under the control of the director general of the DAPSB.

As the main purpose of the Defense Acquisition Program Supervision Bureau is to build a system to prevent corruption, it will perform new functions including prior defense acquisition program verification/investigation and collection of information to monitor the commencement, progress and contracting of DAPA’s major defense acquisition programs on a real-time basis.

The DAPSB’s functions also include those of the existing legal organization such as the commencement of defense acquisition programs, evaluation of proposals, prior legal examination at major stages including purchase decision and litigation related to defense acquisition programs.

The director general of the DAPSB is directly responsible to the DAPA Minister and is appointed as a high-ranking public official in general service under the applicable law. A chief public prosecutor was appointed as the first director general of the DAPSB.

The three new divisions of the Comprehensive Planning Division, Development Program Division and Purchase Program Division under the control of the director general of the DAPSB will perform additional duties including collection of information relating to defense acquisition programs, prevention of corruption and verification/investigation while the existing legal organization will have its name changed to the “Litigation Division” to perform existing duties including legal examination and litigation.



Though the applicable law provides that the heads of such three divisions within the DAPSB shall be appointed as deputy commissioner/secretary/technical secretary, public prosecutors from the joint investigation team and special investigation division were appointed as the first heads of the Comprehensive Planning Division and Litigation Division.

The DAPSB will consist of approximately 70 public officials, subject to the addition of about 40 public officials given the existing legal organization. The DAPSB and the Comprehensive Planning Division are temporary organizations which are programmed to exist until December 31, 2017 pursuant

to Article 17-3(1)3 of the General Rules on Organization and Prescribed Number of Officials of Administrative Agencies.

3. Outlook

1) Prevention of Corruption in Defense Industry

Given that the purpose of the establishment of the Defense Acquisition Program Supervision Bureau is to prevent corruption in defense acquisition programs and the duties of the three new divisions of the DAPSB include collection of information and verification/investigation for such purpose, and that public prosecutors were appointed as director general of the DAPSB and the heads of its divisions, the establishment of the DAPSB and its three divisions is expected to significantly improve the prevention of corruption in defense acquisition programs. As a positive side effect, the new structures are expected to boost public confidence in the defense industry.

2) Concerns about Delay in Defense Acquisition Program

As the establishment of the Defense Acquisition Program Supervision Bureau means that future defense acquisition programs will require prior verification by the DAPSB, decision-making processes in future defense acquisition programs are expected to be delayed inevitably as time for verification will be required in addition to that for legal examination.

3) Concerns about Delay in Timely Combat Readiness

While it is considered imperative to make weapons systems ready for combat on a timely basis in defense acquisition programs to prevent any vacuum in the national security, it will be considered even more important in future defense acquisition programs to ensure transparency by operating the programs strictly under legal procedures and preventing corruption. As a result, delays in timely combat readiness may occur in more defense acquisition programs in the future.

4) Increase in Disputes due to Emphasis on Procedural Transparency

While the emphasis on prior verification and investigation to prevent corruption in defense acquisition programs is expected to enhance procedural transparency, it may also produce negative side effects such as DAPA officials' failure to make decisions in connection with their delegated duties, their reluctance to make individual judgments, and their growing tendency to make conservative judgments, thus in effect hampering the development of harmonious relationships with defense companies and leading to an increase in legal disputes, including lawsuits filed by defense companies not accepting DAPA's decisions.

4. Implications for the future

In light of the foregoing, the government, government-related research institutions and companies planning to operate defense acquisition programs in the future are advised to fully recognize that matters, which had been treated as customary practices so far, will also be subject to prior examination and verification in all sectors.

Therefore, defense suppliers should contemplate overhauling their internal rules and guidelines on the entire course of the defense acquisition program, from the planning stage until the performance and completion stage, so that every program can be operated in accordance with applicable laws and standards. In particular, companies engaged in defense acquisition programs are advised to perform procedures, which have been considered customary practices to date, under the terms and conditions of relevant contracts and applicable laws and regulations and build a system to receive assistance from experts if necessary.

Please feel free to contact us if you have any question on the above.

-
- | | | |
|---|--------------------|-----------------------------|
| ● Partner Seok Ko | TEL +82 2 316 4072 | E-Mail sko@shinkim.com |
| ● Partner In-Hyoung Cho | TEL +82 2 316 4418 | E-Mail ihcho@shinkim.com |
| ● Senior Advisor Yong Hong Kim | TEL +82 2 316 4017 | E-Mail yhongkim@shinkim.com |
| ● Senior Foreign Attorney Philippe Shin | TEL +82 2 316 4206 | E-Mail: pjshin@shinkim.com |
-

Chambers Asia-Pacific Awards 2014
South Korea Law Firm of the Year : Shin & Kim

