



New law allows preemptive criminal background checks by DAPA

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In accordance with the amended Defense Acquisition Program Act that went into effect on July 17, 2024, the Minister of National Defense and the Director of the Defense Acquisition Program Administration (the “**DAPA**”) are now able to request criminal background checks from investigative agencies to confirm whether the representatives and executives of companies or research institutes participating in defense acquisition programs have committed crimes that fall under violations of the Military Secret Protection Act (the “**MSPA**”) or the Defense Technology Protection Act (the “**DTPA**”).

Accordingly, as of January 3, 2025, the relevant provisions of the Negotiated Contract Standards for Defense Force Improvement Projects (DAPA Established Rule No. 968, the “**DAPA Standards**”) have been amended so that the proposing company (the “**Offeror**”) must submit a “Consent for Criminal Record Verification” to the DAPA, and the DAPA can conduct inquiries into criminal records of the representative and executives of the Offeror from the proposal acceptance stage and reflect this in the process of agreeing the contract.

1. Key Amendments

The following is a summary of Article 6-2, which was newly established in accordance with the amendment to the Defense Acquisition Program Act, and Article 8 of the Enforcement Decree of the same Act.

Subject of Verification	<ul style="list-style-type: none">• Representatives and officers of defense contractors, general enterprises, and research institutes participating in defense acquisition programs
Subject Offences	<ul style="list-style-type: none">• Offences against the Military Secret Protection Act• Offences against the Defense Technology Protection Act
Purpose of Verification	<ul style="list-style-type: none">• Cancellation of bidding or acceptance of bid, and cancellation or termination of contract due to violation of the pledge of integrity.• Cancellation of designation of defense contractor due to violation of the pledge of integrity.

- Restriction on eligibility to participate in a bid due to incidents of leakage or infringement of defense technology and security incidents under the MSPA and the DTPA.

Meanwhile, according to the revised DAPA Standards [Attachment 12] 'Unfair Practice History Appraisal and Evaluation', the Offeror must submit a 'Consent for Criminal Record Verification' when submitting a proposal, and the Director of DAPA (Technology Protection Director) uses this to consult records of crimes committed by the representative and executives of the Offeror from the proposal acceptance stage.

[Partial Excerpt from DAPA Standards Attachment 12 'Unfair Practice History Appraisal and Evaluation']

2. Evaluation Procedures

B. Cases where a disposition or criminal punishment was imposed for a violation of the Military Secret Protection Act or the Defense Technology Protection Act

6) When submitting a proposal, the Offeror shall submit a confirmation of the punishment records for violation of the Military Secret Protection Act or the Defense Technology Protection Act pursuant to [Attachment No. 9] and a [Criminal Record Verification Consent Form \(a copy of the alien registration card in the case of a foreigner\)](#) pursuant to [Attached Form \[No. 2-4\] of the Enforcement Rules of the Defense Acquisition Program Act by self-investigation and confirmation, etc.](#)

9) After receiving the proposal, the head of the Integrated Project Management Team shall request the Technology Protection Director to verify the punishment history of the defense technology leakage or infringement incident by comparing it with the confirmation of punishment history presented by the company; provided, however, that foreign companies (including trade agencies) are excluded.

9-1) [The head of the Integrated Project Management Team may additionally request the Technology Protection Director for criminal records under Article 6-2 of the Defense Acquisition Program Act regarding the criminal records of the representative and registered executive officers \(as of the day before the deadline for registration of bidding\) of the company participating in the bid. The requester of the criminal record verification must attach the list of persons being verified and a Criminal Record Verification Consent Form \(a copy of the alien registration card in the case of a foreigner\) pursuant to Attached Form \[No. 2-4\] of the Enforcement Rules of the Defense Acquisition Program Act](#)

2. Purpose and Implications of Amendment

The main purpose of this revision is to address a recurring problem: even when the representatives and employees of the companies participating in the defense industry bidding had been prosecuted or convicted for violating the MSPA and the DTPA, the Director of the DAPA could not actively verify the records without obtaining the Offeror's confirmation;

therefore, there may have been cases when past convictions could not be considered during the selection of the contracting party.

In other words, in the past, a criminal record for violating the MSPA was reflected in the contract signing process only by voluntary investigation and confirmation of the criminal records submitted by companies participating in the defense project bid. Thanks to the revision of the Defense Acquisition Program Act and DAPA's contract standards, the DAPA can now actively verify and reflect the relevant criminal history even if the Offeror remains silent regarding its criminal records and refuses to submit the investigation record verification confirmation and criminal record confirmation.

A broader scope of individuals whose criminal records can be accessed by DAPA had been considered but was finally not included in the final version of the amendment. The issue was whether, for the purpose of "examination of the ability to perform the contract for the determination of the successful bidder or the awarded agency" (the "Purpose"), not only the representative and executives of the defense contractor, but also the "employees who perform the relevant duties" (the "Subjects") could be subjected to an "investigation record verification" along with the Criminal Record Verification regarding violations of the MSPA or the DTPA (the "Subject Information"). However, the final scope was limited to "criminal record verification" of "representatives and executives" of defense contractors, excluding employees, with the deletion or reduction of the above 'Purpose', 'Subjects', and 'Subject Information' in the final revised regulations.

Meanwhile, the above DAPA Standards related to evaluation of proposals stipulate that point deductions shall be made for companies with "employees" (and not only representatives and executives of the Offeror) that hold past criminal records of indictment or suspension of indictment, prosecution, or sentencing for violating the MSPA or the DTPA, and in particular, if multiple personnel are involved, additional weighted point deductions will be made in the evaluation. In addition, DAPA has a similar provision in the "Detailed Standards for Contract Performance Evaluation on the Purchase of Goods among Competitive Products between Small and Medium Enterprises" (DAPA Established Rule No. 954, "**DAPA Contract Performance Evaluation Detailed Standards**"), which applies when the DAPA procures the purchase of goods through competitive bidding among small and medium enterprises.

Therefore, key members of companies participating in defense acquisition programs must make every effort to prevent crimes and security incidents, such as violations of the MSPA, and in the event of a related problem, in consideration of the fact that the DAPA can actively verify the criminal record of representatives and executives in accordance with the revised Defense Acquisition Program Act, it is necessary to actively respond to the entire criminal process from the beginning of the investigation to indictment, transfer, prosecution, and trial with the assistance of legal experts.

In addition, if a related company is subject to a point deduction in the process of evaluating proposals following such criminal proceedings, this will have a decisive impact on the evaluation results in a situation where there is not much technological difference between companies. However, there are considerable issues that are legally disputable in relation to the point deductions, considering that (i) the purpose of the "Consent for Criminal Record Verification" was explicitly stated as "Examination of Contract Performance Capacity or Evaluation of Proposal" in the original draft of the revised Defense Acquisition Program Act, but was changed and uncodified in the process of reviewing the bill, (ii) the law on the invalidation of punishment strictly stipulates the reason for Criminal Record Verification Certificate, and (iii) even according to the revised Defense Acquisition Program Act, still no legal grounds exist for verification into criminal record for employees, so it would be essential to receive assistance from legal experts with abundant experience in the process of evaluating proposals.

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If you have any questions or need help with the above, please feel free to contact us and we will provide you with more details.

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