The Impact of Integrity Violations by Executives and Employees on Their Companies and Institutions in Defense Procurement Bidding

By Won Jung

The Defense Acquisition Program Administration (DAPA), headed by Minister Lee Yong-cheol, announced on Monday, September 21, that it had amended seven administrative rules, including the "Qualification Evaluation Criteria for Goods Procurement," to strengthen fairness and transparency in defense procurement contracts. The amendments substantially increase scoring penalties for unfair practices, including bribery, collusion, and the submission of false documents, and introduce new penalties for improper intermediation and solicitation.

Under DAPA's qualification evaluation criteria, a bidder's record of unfair practices is assessed as part of its credibility evaluation. When a bidder has been sanctioned for misconduct such as bribery or collusion, penalty points assigned to each violation are accumulated, with higher cumulative totals resulting in larger deductions from the bidder's evaluation score. Under the previous framework, certain violations, such as bribery involving KRW 10 million or less, did not necessarily trigger a deduction for a single offense. In addition, even misconduct attracting the most severe debarment sanction could fall short of the threshold for the maximum scoring deduction. To address these shortcomings, DAPA has adjusted the criteria so that a single violation can trigger a deduction and sufficiently serious misconduct can attract the maximum deduction. It has also increased the maximum deduction by 50 percent, substantially strengthening the effectiveness of the evaluation framework.

The revised penalty points and evaluation score deductions are summarized below.

Category	Misconduct or measure	Previous	Revised
Penalty points	Bribery	2–10 points	5–20 points
Penalty points	Unfair subcontracting practices	3–5 points	7–10 points
Penalty points	Collusion, submission of false documents, etc.	5–10 points	10–20 points
Penalty points	Losses to the national treasury caused by fraud or other misconduct	5–10 points	5–20 points
Score deductions	Deduction from evaluation score	−0.5 to −2.0 points	−1.0 to −3.0 points
New criterion	Improper intermediation and solicitation	No deduction criteria	New deduction criteria introduced

To enhance transparency and fairness in government procurement, the Act on Contracts to Which the State Is a Party (the "State Contracts Act") establishes an "integrity pact" system, while the Defense Acquisition Program Act provides for an "integrity pledge" system for defense procurement. As defense procurement contracts fall within government procurement, both systems apply.

Under the State Contracts Act, the integrity pact obligations apply to bidders and contracting parties. Under the Defense Acquisition Program Act, however, integrity pledge obligations extend to DAPA officials; executives and employees of the Agency for Defense Development (ADD) and the Defense Agency for

Technology and Quality (DTaQ); and representatives and executives of participating companies and research institutions. The latter framework therefore extends these obligations to the procuring authorities themselves.

The scope of the obligations also differs. The State Contracts Act prohibits bribery, collusion, and the disclosure of bidding or contract-related information through improper intermediation or solicitation. The Defense Acquisition Program Act goes further, also prohibiting improper intermediation and solicitation themselves, unfair subcontracting practices, and the leakage or compromise of defense industry technology, military secrets, and information relating to defense acquisition programs.

A particularly significant feature of the integrity pledge system under the Defense Acquisition Program Act is that, where a participating company or research institution violates its obligations, the Minister of National Defense or the head of DAPA may impose a stringent restriction on eligibility to participate in bidding for up to five years under Article 59. By comparison, the current State Contracts Act provides for debarment of up to two years.

However, because the integrity pledge obligations under the Defense Acquisition Program Act apply specifically to the "representatives" and "executives" of companies or research institutions, violations committed by employees do not fall within the scope of this particular sanction. In practice, employees often carry out the direct acts involved, such as paying bribes, engaging in collusion, or obtaining and collecting military secrets. When such conduct is uncovered, the companies and research institutions concerned typically maintain that their representatives and executives neither instructed nor participated in it. This explains why no debarment sanction has, to date, been imposed for a breach of the integrity pledge obligations under the Defense Acquisition Program Act. Instead, misconduct by employees has resulted in debarment of their companies or research institutions under the State Contracts Act.

DAPA's administrative rules, by contrast, require scoring deductions at the contract award stage where, within the preceding three years, a bidder has been debarred by the head of DAPA for unfair practices—almost invariably under the State Contracts Act—or has a record of a suspension of indictment, indictment, or criminal judgment relating to security breaches or the leakage or compromise of defense industry technology.

Crucially, these deductions for a history of unfair practices are not limited to misconduct by representatives or executives: they also apply to misconduct by employees. Accordingly, where an executive or employee of a company participating in defense acquisition engages in bribery, collusion, unfair subcontracting, improper intermediation or solicitation, fraud or other misconduct causing losses, the submission of false documents, or security breaches or the leakage or compromise of defense industry technology, the most immediate and damaging consequence for the company is the deduction applied for its record of unfair practices. Such deductions can effectively prevent the company from winning defense procurement contracts for three years.

Indeed, in the tender for the detailed design and construction of the lead ship for the Korean Next-Generation Destroyer (KDDX) program, the company responsible for the basic design, despite its objectively advantageous position, failed to secure the contract because it could not overcome the scoring disadvantage arising from deductions for its record of unfair practices.

Ultimately, DAPA's latest strengthening of these scoring penalties can be viewed as a decisive measure to ensure that companies whose executives or employees engage in unfair practices are effectively prevented from winning defense procurement contracts for three years.