

# Administrative Legality of Technical Specifications in Thai Government Procurement Doctrinal Analysis and Judicial Oversight

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## Abstract

This study examines the legality of determining technical specifications in government procurement under Thai administrative law. The drafting of Terms of Reference (TOR) constitutes a critical exercise of administrative discretion that must comply with the principles of legality, proportionality, equality, transparency, and reasonableness (Administrative Procedure Act B.E. 2539 (1996) Public Procurement and Supplies Administration Act B.E. 2560 (2017)). Using a doctrinal legal research approach, the analysis draws on statutory provisions, judicial precedents of the Administrative Court, and comparative international frameworks.

The findings reveal recurring challenges in procurement practices, including unlawful brand specific references, disproportionate restrictions, and lack of transparent justification, which have been consistently annulled by the Administrative Court (Act Establishing Administrative Courts and Administrative Court Procedure B.E. 2542 (1999)). Lawful specifications, by contrast, were supported by demonstrable technical necessity, adherence to international standards, or operational imperatives. Judicial oversight thus plays a decisive role in safeguarding fairness, promoting competition, and ensuring accountability.

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By situating Thai procurement practices within international standards such as the UNCITRAL Model Law on Public Procurement (2011) and World Bank procurement guidelines (2020), this research contributes to comparative discourse on administrative justice. It underscores the importance of aligning domestic procurement systems with global frameworks to enhance transparency, efficiency, and public trust.

**Keyword:** International Procurement Standards; Administrative Law; Public Procurement; Judicial Oversight

## 1. Introduction

### 1.1 Background and Significance of the Problem

Public procurement is one of the most significant mechanisms through which states allocate resources and deliver essential services.<sup>2</sup> In Thailand, the procurement system is primarily governed by the Public Procurement and Supplies Administration Act B.E. 2560 (2017), supplemented by related regulations and administrative guidelines.<sup>3</sup> These instruments are designed to ensure that the expenditure of public funds is conducted efficiently, transparently, and in accordance with the principles of administrative law and good governance (Administrative Procedure Act B.E. 2539 (1996)). Procurement is therefore not merely a technical or financial process but a form of administrative action that directly implicates constitutional rights, market competition, and public trust.<sup>4</sup>

A central component of procurement procedures is the drafting of tender documents, particularly the Terms of Reference (TOR), which specify the technical characteristics of goods or services to be acquired.<sup>5</sup> The determination of such specifications is intended to guarantee that the state obtains products or services of appropriate quality, aligned with policy

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<sup>2</sup> Oindrila Kundu et al., “Impacts of Policy-Driven Public Procurement: A Methodological Review,” *Science and Public Policy* 52, no. 1 (2025): 50.

<sup>3</sup> Saranphat Chinsongkharm, “Knowledge and Understanding about Government Procurement and Supplies Management Act B.E. 2560 and Efficiency of Supplies Management of Staff: A Case Study of the Division of Building and Ground of Mahasarakham University,” *Journal of Organizational Innovation & Culture* 14, no. 1 (June 2023): 36.

<sup>4</sup> Kitivichaya Watcharothai, “The Studies for Guideline Protection of Public Procurement Corruption in Thailand,” *International Journal of Crime, Law and Social Issues* 5, no. 1 (January-June 2018): 155.

<sup>5</sup> T. Dolla, S. Venkatachalam, and V. S. Kumar Delhi, “Institutional Shaping of CDE Implementation in BIM-Enabled AEC Projects,” *Journal of Information Technology in Construction* 29, (October 2024): 834.

objectives and operational needs.<sup>6</sup> However, this process also involves the exercise of administrative discretion, which must be carefully constrained by legal principles to prevent abuse of power, discrimination, or distortion of market competition (Supreme Administrative Court rulings on unlawful TORs). Complaints and litigation arising from TOR drafting in Thailand reveal recurring concerns about unlawful or disproportionate specifications, including brand specific requirements and vague technical conditions, which restrict competition and undermine fairness.

Scholarly literature consistently highlights the relevance of legality, proportionality, equality, transparency, and reasonableness in procurement decision making.<sup>7</sup> Thai commentators emphasize that procurement decisions constitute administrative actions subject to judicial review, requiring clear statutory authority and adherence to procedural safeguards (Public Procurement and Supplies Administration Act B.E. 2560 (2017)). Analyses of Administrative Court case law reveal that the Court applies structured tests of necessity, appropriateness, and balance when reviewing contested specifications.<sup>8</sup> Internationally, similar jurisprudence can be found in decisions of the European Court of Justice, which has invalidated procurement conditions deemed discriminatory or disproportionate (ECJ Case C 513/99, *Concordia Bus Finland*).<sup>9</sup> Comparative studies in European Union law and UNCITRAL guidelines likewise stress that procurement specifications must be justified by objective necessity and must not unduly restrict competition (UNCITRAL, 2011).<sup>10</sup>

Beyond judicial oversight, procurement reform literature situates the Thai framework within broader governance agendas aimed at enhancing transparency and efficiency.<sup>11</sup> OECD reports and World Bank studies highlight the importance of aligning domestic procurement systems with international standards to foster accountability and sustainable development

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<sup>6</sup> D. Al Ahmari and S. K. Brika, "Public Procurement Outcomes: Aligning Process, Policy, and Impact," *Journal of Posthumanism* 5, no. 2 (April 2025): 3.

<sup>7</sup> Albert Sanchez-Graells, "The Procurement Act 2023's Kaleidoscopic View of the Public Interest," *Legal Studies* 45, no. 2 (June 2025): 171.

<sup>8</sup> Yukonthorn Techawanakorn, "The Control of Usage of Discretionary Power by Administrative Court of Thailand," *Journal of Multidisciplinary Academic Research and Development (JMARD)* 5, no. 4 (October-December 2023): 6.

<sup>9</sup> Peter Nemec and Marek Kubak, "Evaluating the Value for Money in Procurement for EU-Funded Projects: The Perspectives of Slovak Regional and Local Authorities," *Humanities and Social Sciences Communications* 11, no. 1 (2024): 3.

<sup>10</sup> Willem A. Janssen, *Public Procurement Law in the European Union in Public Procurement: Theory, Practices and Tools*, ed. by Jolien Grandia and Leentje Volker (Cham: Springer International Publishing, 2023), 44.

<sup>11</sup> Thanawat Saelawong et al., "Transparency and Budget Savings in Public Procurement: Evidence from Thailand's Infrastructure Transparency Initiative (CoST)," *Journal of Financial Crime* 31, no. 6 (December 2023): 1407.

(OECD, Government at a Glance, 2023; World Bank, Benchmarking Public Procurement, 2020). Scholars also identify recurring risks in specification drafting, including disproportionate burdens on suppliers and insufficient justification, and argue that capacity building, standardized guidelines, and stakeholder participation are critical to mitigating such risks.

Against this backdrop, the present study investigates the legality of technical specifications in government procurement under Thai administrative law. Specifically, it asks: How do Thai statutes and Administrative Court jurisprudence define the boundaries of lawful discretion in drafting technical specifications, and how do these practices align with international procurement standards? By analyzing statutory provisions, judicial precedents, and doctrinal principles, the research clarifies the boundaries of lawful administrative discretion in procurement and highlights the implications of unlawful practices for governance, competition, and public accountability. Furthermore, by situating Thai practice within broader international standards such as the UNCITRAL Model Law on Public Procurement (2011) and World Bank procurement guidelines (2020), the study contributes to comparative discourse on procurement law and administrative justice, thereby enhancing its relevance to both domestic and global audiences.<sup>12</sup>

Although previous studies have extensively examined public procurement from the perspectives of governance, transparency, anti-corruption, procurement efficiency, and policy implementation, most have focused on administrative management or public policy rather than the doctrinal limits of administrative discretion in determining technical specifications within procurement procedures. Existing Thai studies generally explain the Public Procurement and Supplies Administration Act B.E. 2560 (2017) and procurement practices but provide limited systematic analysis of how the Administrative Court evaluates the legality of Terms of Reference (TOR) through the principles of legality, proportionality, equality, transparency, and reasonableness. Likewise, international scholarship has primarily emphasized procurement governance, competition policy, and regulatory reforms under frameworks such as the UNCITRAL Model Law on Public Procurement (2011) and World Bank procurement guidelines (2020), while comparatively little attention has been devoted to judicial control over administrative discretion in drafting technical specifications. Accordingly, this study addresses this doctrinal gap by integrating statutory interpretation, Administrative Court jurisprudence, and comparative international standards to clarify the legal boundaries governing technical specifications in Thai

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<sup>12</sup> Karem Sayed Aboelazm et al., “Improving Public Sector Procurement Methods in International Practices: A Comparative Study,” *Journal of Lifestyle and SDG’s Review* 5, no. 2 (December 2025): 6-18.

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government procurement. In doing so, it contributes to administrative law scholarship by providing a structured legal framework for assessing the legality of procurement specifications and strengthening consistency between domestic administrative practice and internationally recognized procurement principles.

## **1.2 Research objectives**

1.2.1 To clarify the legal boundaries governing technical specifications in Thai government procurement and contribute to administrative law scholarship.

1.2.2 To promote consistent interpretation and application of procurement and administrative laws in reviewing the legality of Terms of Reference (TOR).

1.2.3 To provide practical guidance for preparing lawful technical specifications that foster fair competition, transparency, and public accountability.

## **1.3 Scope of the Research**

1.3.1 Content Scope: The study examines the legality of technical specifications in Thai government procurement and the exercise of administrative discretion in drafting Terms of Reference (TOR).

1.3.2 Data Scope: The analysis is based on the Public Procurement and Supplies Administration Act B.E. 2560 (2017), the Administrative Procedure Act B.E. 2539 (1996), the Act Establishing Administrative Courts and Administrative Court Procedure B.E. 2542 (1999), together with relevant Administrative Court decisions issued between 2017 and 2025.

1.3.3 Analytical Scope: The study employs doctrinal legal analysis and comparative assessment with the UNCITRAL Model Law on Public Procurement (2011) and the World Bank Procurement Regulations (2020).

## **1.4 Methodology**

This study employed a doctrinal legal research approach, focusing on the systematic analysis of statutory provisions, administrative regulations, and judicial precedents relevant to the determination of technical specifications in government procurement. Doctrinal analysis was selected because procurement decisions in Thailand are primarily governed by administrative law, requiring close examination of legal texts and case law to clarify the boundaries of lawful discretion (Public Procurement and Supplies Administration Act B.E. 2560 (2017); Administrative Procedure Act B.E. 2539 (1996); Act Establishing Administrative Courts and Administrative Court Procedure B.E. 2542 (1999)).

#### 1.4.1 Research Design

The study was conducted as a qualitative, interpretive analysis of legal materials. The objective was to identify the principles governing administrative discretion in procurement and to evaluate how these principles have been applied by the Administrative Court in practice. The analysis was guided by five core administrative law principles: legality, proportionality, equality, transparency, and reasonableness.<sup>10</sup>

#### 1.4.2 Case Selection Criteria

Judicial decisions were selected from the Thai Administrative Court database, focusing on disputes involving the legality of Terms of Reference (TOR) between 2017 and 2025. Cases were included if they directly addressed technical specifications in procurement documents. Decisions were categorized as lawful or unlawful based on whether the Court upheld or annulled the contested specifications.

#### 1.4.3 Primary Legal Materials

The primary legal materials for this study consist of both statutory provisions and judicial decisions. The statutory framework includes the Public Procurement and Supplies Administration Act B.E. 2560 (2017), the Administrative Procedure Act B.E. 2539 (1996), and the Act Establishing Administrative Courts and Administrative Court Procedure B.E. 2542 (1999).<sup>13</sup> Complementing these statutes are selected rulings of the Administrative Court and the Supreme Administrative Court, which specifically address the legality of technical specifications in procurement documents. Together, these sources provide the doctrinal foundation for analyzing how administrative discretion is exercised and reviewed in the context of government procurement.

#### 1.4.4 Secondary Legal Materials

The secondary legal materials consulted in this study include scholarly articles, commentaries, and textbooks addressing administrative law, procurement law, and governance. In addition, reports and guidelines issued by government agencies and international organizations such as those from the OECD, UNCITRAL, and the World Bank were examined to provide comparative perspectives and to situate Thai procurement practices

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<sup>13</sup> Rob van Gestel, “Quality, Methodology, and Politics in Doctrinal Legal Scholarship,” *Law and Method* 2023, no. Jan–Mar (2023): 6–8.

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within broader international standards.<sup>14</sup> These sources complement the primary legal materials by offering interpretive insights, policy analyses, and normative frameworks that enrich the doctrinal analysis.

#### 1.4.5 Analytical Framework

Each procurement case and statutory provision was examined against the five administrative law principles of legality, proportionality, equality, transparency, and reasonableness. Specifications considered lawful were those supported by demonstrable necessity, adherence to international standards, or operational efficiency. In contrast, specifications deemed unlawful were characterized by a lack of justification, disproportionate restrictions, or discriminatory effects, as reflected in Administrative Court precedents.<sup>8</sup> This framework provided a structured basis for distinguishing between compliant and non compliant procurement practices and for assessing the boundaries of lawful administrative discretion.

#### 1.4.6 Comparative Dimension

While the primary focus was on Thai law, the study also referenced international procurement standards, including the UNCITRAL Model Law on Public Procurement (2011) and World Bank procurement guidelines (2020), to situate findings within a broader global context. This comparative lens allowed evaluation of Thailand's procurement practices against internationally recognized benchmarks.

#### 1.4.7 Validation and Reliability

To ensure reliability, only authoritative sources were included, and judicial decisions were cross checked against statutory provisions. Triangulation was achieved by comparing statutory interpretation, judicial reasoning, and scholarly commentary, thereby strengthening the validity of conclusions. An appendix listing analyzed cases was prepared to enhance transparency and replicability.

#### 1.4.8 Limitations

The reliance on doctrinal analysis means that findings are interpretive rather than empirical. While this approach is appropriate for clarifying legal principles, future research could incorporate quantitative data (e.g., frequency of annulled TORs, litigation outcomes) or

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<sup>14</sup> Su Myat Nwal, "Measures to Curb Corruption in Public Procurement of Myanmar and Thailand," *Panya Panithan* 9, no. 2 (July–December 2024): 403.

qualitative insights (e.g., interviews with procurement officials) to enhance empirical depth and novelty. Additionally, interpretive variability among scholars may lead to differences in categorization, which underscores the importance of transparency in case selection and analytical criteria.<sup>15</sup>

### 1.5 Expected Benefits

1.5.1 This study clarifies the legal boundaries governing technical specifications in Thai government procurement and contributes to administrative law scholarship.

1.5.2 The findings support the consistent interpretation and application of procurement and administrative law in reviewing the legality of Terms of Reference (TOR).

1.5.3 The study provides guidance for preparing lawful technical specifications that promote fair competition, transparency, and public accountability.

## 2. Results

The analysis of administrative legality in the determination of technical specifications within government procurement documents reveals several recurring patterns.

### 2.1 Prevalence of Legality Concerns

Review of procurement practices indicates frequent instances where technical specifications were defined without sufficient legal or technical justification. In particular, references to specific brands or models were often made without demonstrable necessity, raising concerns of discriminatory practice and unlawful restriction of competition under the Public Procurement and Supplies Administration Act B.E. 2560 (2017).<sup>16</sup>

### 2.2 Judicial Oversight and Standards Applied

Decisions of the Administrative Court consistently emphasize that technical specifications must be grounded in clear statutory authority and adhere to the principles of legality, proportionality, equality, transparency, and reasonableness (Administrative Procedure Act B.E. 2539 (1996)) The Court has applied a structured test of necessity, appropriateness,

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<sup>15</sup> Virginia Braun and Victoria Clarke, “Reporting Guidelines for Qualitative Research: A Values-Based Approach,” *Qualitative Research in Psychology* 22, no. 2 (April-June 2025): 430.

<sup>16</sup> Elisabetta Iossa, Claudia Calini, and Andrea Catenazzo, “Multiple Tools to Enhance Competition in Public Procurement,” *European Competition Journal*, (2025): 8.



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and balance, thereby establishing a jurisprudential framework for evaluating contested procurement terms (Act Establishing Administrative Courts and Administrative Court Procedure B.E. 2542 (1999)).<sup>8</sup>

### 2.3 Patterns of Compliance and Non Compliance

Specifications deemed lawful were typically supported by verifiable technical necessity, compatibility with existing systems, or adherence to international standards such as the UNCITRAL Model Law on Public Procurement (2011) and World Bank procurement guidelines (2020). Conversely, unlawful determinations were characterized by vague or unsupported justifications, excessive restrictions that excluded potential competitors, or disproportionate burdens on suppliers (Supreme Administrative Court rulings on unlawful TORs).<sup>17</sup>

### 2.4 Impact on Procurement Outcomes

Where unlawful specifications were identified, the Court ordered annulment of procurement processes or partial invalidation of tender documents.<sup>18</sup> These rulings not only delayed procurement activities but also imposed accountability on responsible officials, underscoring the administrative consequences of non compliance.

### 2.5 Implications for Governance

The findings demonstrate that adherence to administrative law principles in drafting Terms of Reference (TOR) is critical for safeguarding fairness, promoting free competition, and ensuring efficient use of public funds. The jurisprudence reinforces the expectation that state agencies must justify technical requirements with transparent, evidence based reasoning to maintain public trust in procurement systems (OECD, Government at a Glance, 2023; World Bank, Benchmarking Public Procurement, 2020).

### 2.6 Discussion

The findings of this study underscore the pivotal role of administrative law principles in shaping the legality and fairness of government procurement processes. The determination of technical specifications within tender documents is not a purely technical exercise; rather, it represents an exercise of administrative discretion that must be constrained by the principles

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<sup>17</sup> Tunde Tatrai, Gyongyi Vorosmarty, and Peter Juhasz, "Intensifying Competition in Public Procurement," *Public Organization Review* 24, no. 1 (March 2024): 245.

<sup>18</sup> Phatcharaphorn Siriwiwolkul, "Procurement Process in Spain: A Study on Procurement Appeals," *Administrative Courts Journal* 24, no. 2 (May–August 2024): 185.

of legality, proportionality, equality, transparency, and reasonableness as articulated in the Administrative Procedure Act B.E. 2539 (1996) and reinforced by the Public Procurement and Supplies Administration Act B.E. 2560 (2017). Failure to adhere to these principles has been shown in Administrative Court jurisprudence to result in annulment of procurement procedures, delays in public service delivery, and accountability measures against responsible officials (Supreme Administrative Court rulings on unlawful TORs).<sup>19</sup>

A central theme emerging from the results is the tension between administrative efficiency and market fairness. On one hand, state agencies seek to ensure compatibility, quality, and operational continuity by specifying detailed technical requirements. On the other hand, overly restrictive or unjustified specifications risk undermining free competition, creating monopolistic conditions, and eroding public trust outcomes that the Court has repeatedly identified as contrary to the principles of equality and non discrimination under Thai administrative law (Act Establishing Administrative Courts and Administrative Court Procedure B.E. 2542 (1999)).<sup>20</sup>

The comparative analysis of lawful and unlawful procurement practices highlights the importance of evidence based justification. Specifications deemed lawful were consistently supported by demonstrable technical necessity, adherence to international standards, or operational imperatives. In contrast, unlawful practices lacked transparent reasoning, relied on arbitrary brand references, or imposed disproportionate burdens on suppliers, thereby violating the principle of proportionality and the requirement of reasonableness (Administrative Court precedents). This distinction reinforces the need for agencies to document and disclose the rationale behind procurement decisions, enabling judicial review and strengthening public accountability.

From a governance perspective, the results suggest that institutional capacity building is essential. Officials responsible for drafting Terms of Reference (TOR) must be equipped with both technical knowledge and legal awareness to ensure compliance. Training programs, standardized guidelines, and internal review mechanisms could mitigate risks of unlawful specifications and promote consistency across agencies. Moreover, embedding transparency

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<sup>19</sup> Erika Bozzay et al, Linking Integrity, *Business Conduct and Public Procurement: New approaches for sustainable supply chains* (Paris: OECD Publishing, 2025), 6-9.

<sup>20</sup> Sangeeta Khorana, Santiago Caram, and Nripendra P. Rana, “Measuring Public Procurement Transparency with an Index: Exploring the Role of e-GP Systems and Institutions,” *Government Information Quarterly* 41, no. 3 (September 2024): 26.

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and stakeholder participation in procurement processes aligns with the broader principles of good governance and administrative justice (OECD, Government at a Glance, 2023; UNCITRAL Model Law on Public Procurement, 2011; World Bank, Benchmarking Public Procurement, 2020).<sup>21</sup>

Finally, the implications extend beyond the Thai context. The principles applied by the Thai Administrative Court resonate with international procurement standards, such as those articulated by the UNCITRAL Model Law on Public Procurement (2011) and the World Bank procurement guidelines (2020). Aligning domestic practices with these global frameworks not only enhances legal compliance but also fosters international confidence in Thailand's procurement system. This comparative perspective situates the study within a broader discourse on sustainable development, transparency, and equitable public administration.

### 3. Conclusion and Suggestions

From the examination in Administrative Legality of Technical Specifications in Thai Government Procurement: Doctrinal Analysis and Judicial Oversight, the study synthesizes key conclusions and provides the following recommendations

#### 3.1 Conclusion

This study demonstrates that the determination of technical specifications in government procurement is not merely a procedural requirement but a critical exercise of administrative discretion that must be firmly anchored in the principles of administrative law. Analysis of statutory provisions and judicial precedents confirms that legality, proportionality, equality, transparency, and reasonableness are indispensable safeguards against arbitrary or discriminatory practices in the drafting of tender documents (Public Procurement and Supplies Administration Act B.E. 2560 (2017); Administrative Procedure Act B.E. 2539 (1996)). When these principles are neglected such as through unjustified brand references or disproportionate restrictions the result is unlawful procurement, distortion of market competition, and erosion of public trust (Supreme Administrative Court rulings on unlawful TORs).

The jurisprudence of the Administrative Court highlights the importance of evidence-based justification in procurement decisions. Specifications deemed lawful were consistently supported by demonstrable technical necessity, adherence to international standards, or

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<sup>21</sup> Imelda Suardi et al., "Procurement Governance in Reducing Corruption in the Indonesian Public Sector: A Mixed Method Approach," *Cogent Business & Management* 11, no. 1 (August 2024): 2-3.

operational imperatives. Conversely, unlawful practices lacked transparent reasoning and imposed undue burdens on suppliers, leading to annulment of procurement processes and accountability measures against officials (Act Establishing Administrative Courts and Administrative Court Procedure B.E. 2542 (1999)). These findings underscore the dual role of procurement law: ensuring efficiency in public administration while safeguarding constitutional rights and economic freedoms.

From a governance perspective, the study emphasizes the need for institutional capacity building. State agencies must strengthen the legal and technical competence of officials responsible for drafting Terms of Reference (TOR), supported by standardized guidelines, training programs, and internal review mechanisms. Such measures would reduce risks of unlawful specifications and promote consistency across agencies. Furthermore, embedding transparency and stakeholder participation in procurement processes aligns with broader principles of good governance and administrative justice (OECD, *Government at a Glance*, 2023; World Bank, *Benchmarking Public Procurement*, 2020).

Finally, the implications extend beyond the Thai context. The principles applied domestically resonate with international procurement standards, such as those articulated by the UNCITRAL Model Law on Public Procurement (2011) and the World Bank procurement guidelines (2020). Aligning national practices with these global frameworks may enhance compliance and accountability while fostering international confidence in Thailand's procurement system. By situating procurement within the broader framework of administrative justice and governance, this study contributes to comparative discourse on sustainable, transparent, and equitable public administration.

However This research contributes by clarifying the boundaries of lawful administrative discretion in procurement and situating Thai practice within international standards. Future studies could extend this work by incorporating empirical data comparative case studies across ASEAN and OECD jurisdictions and policy innovation frameworks such as digital procurement oversight or sustainability driven specifications. Such extensions would deepen understanding of procurement legality and strengthen the global relevance of Thai administrative law.

### 3.2 Suggestions

3.2.1 Strengthen institutional capacity for drafting Terms of Reference (TOR)  
Government agencies should provide continuous training and standardized guidelines to officials responsible for procurement, ensuring that technical specifications are justified, transparent, and consistent with administrative law principles.

3.2.2 Align domestic procurement practices with international standards: Thailand should integrate benchmarks from frameworks such as the UNCITRAL Model Law on Public Procurement (2011) and World Bank procurement guidelines (2020) to enhance transparency, promote fair competition, and build international confidence in its procurement system.

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