

採購申訴審議業務

Review of Procurement Complaints

壹 採購申訴審議委員會

本會自八十八年五月二十七日成立採購申訴審議委員會，現有委員15人，諮詢委員142人，涵蓋工程、法律、政府採購等各種專長之專業人士，以客觀、公正、公平、合理之態度處理申訴、調解爭議案件。

貳 業務辦理情形

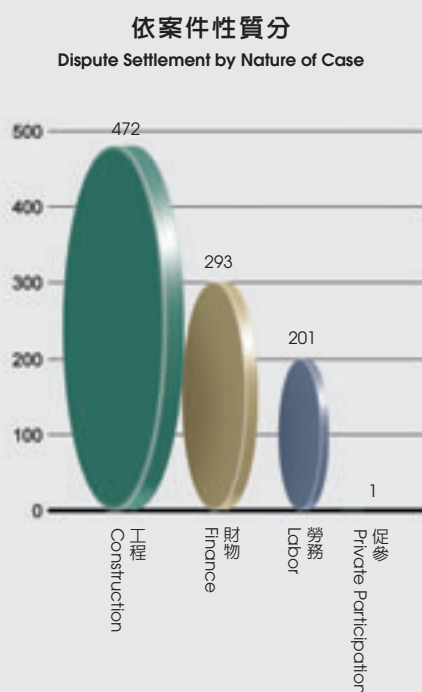
一、概述

本會處理機關與廠商間之政府採購爭議，分為申訴及調解二種類型。

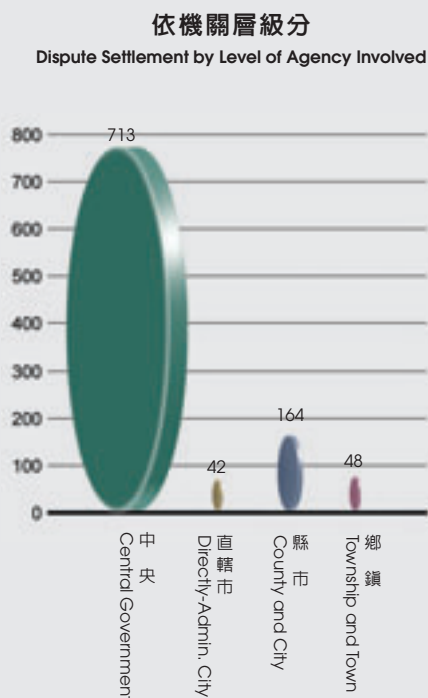
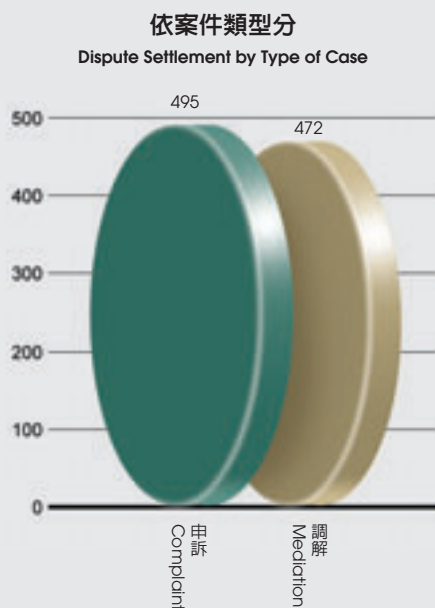
廠商對招標機關之採購行為認有違反法令致其權利或利益受損，於向招標機關提出異議後，不服機關處理結果，或機關逾二十日未處理時，得向本會提出申訴。本會處理申訴案件之重點在審查機關於招標、審標、決標、履約、驗收過程中有無違反法令。由於政府採購法施行二年有餘，機關與廠商逐漸熟悉法律規定及招標程序，有關招標文件規定

二、爭議處理案件統計（90.1.1~90.12.31）

Dispute Settlement Statistics (Jan. 1-Dec. 31, 2001)



九二一校園重建工程：南投縣北梅國中



1 The Complaint Review Board for Government Procurement

On May 27, 1999 the PCC established the Complaint Review Board for Government Procurement, which currently has 15 members as well as 142 consulting members. The members are professionals with a range of specializations including engineering, law, and government procurement, and they handle complaints and mediate disputes in an attitude of objectivity, justice, fairness, and reasonableness.

2 Status of Operations

1. General Description

The government procurement disputes between government agencies and companies which the PCC handles are divided into two types: complaints and mediation.

When companies feel that the procurement behavior of agencies that tender for bids violates the law to the extent that their rights or interests are harmed, and when the objections they raise to the agencies are not resolved to their satisfaction, or when the agencies fail to address the objections within 12 days, they are entitled to submit complaints to the PCC. The main focus of the PCC's handling of complaint cases is to investigate whether or not the agencies violated the law in the process of bid tendering, bid evaluation, bid awarding, contract performance, and inspection and acceptance. Since the Government Procurement Law has been in effect for more than two years now, government agencies and suppliers alike are gradually becoming familiar with the relevant laws, regulations, and bidding procedures, so that complaints regarding bidding document rules are getting fewer by the day. Disputes about whether suppliers can be designated as undesirable suppliers because of violations in the carrying out of contracts, by contrast, are growing more numerous all the time.

Also, disputes between agencies and suppliers regarding contract fulfillment or acceptance are difficult to avoid in the process of contract fulfillment, and any party is entitled to apply to the PCC for mediation when negotiations with the other side fail. When a request for mediation is submitted by a supplier, the law stipulates that the agency involved

之申訴日益減少，反而廠商因履約過程中之違約行為所致是否構成不良廠商之爭議愈來愈多。

另機關與廠商在履約過程中，不免就履約、驗收事項發生爭議，任何一方均得於與他方協議不成之情形下向本會申請調解，而廠商申請調解時，依法機關不得拒絕進行調解程序。

又本會現依促進民間參與公共建設法，處理有關民間參與公共建設申請及審核程序之爭議，九十年此類案件計一件。

三、爭議處理成效 Results of Dispute Settlement (Jan. 1 - Dec. 31, 2001)

1．申訴案件 (90.1.1~90.12.31) Complaint Cases

實體終結 Substantially Resolved 199	有理由 With Reason	86	43.2%
	部分有理由 With Partial Reason	32	16.1%
	無理由 Without Reason	81	40.7%
程序終結 Procedurally Resolved	275		
處理中 In Disposition	142		
合計 Total	616		

2．調解案件 Mediation Cases

實體終結 Substantially Resolved 320	成立 Established	184	59.5%
	不成立 Not Established	125	40.5%
	待確定 To Be Determined	11	
程序終結 Procedurally Resolved	93		
處理中 In Disposition	266		
合計 Total	679		

說明：實體終結以申訴會委員會議通過為準，當調解案件經申訴會委員會議通過提出調解方案者，依採購履約爭議調解暨收費規則第二十六條規定當事人得於送達後十日之不變期間內向申訴會提出異議，此種情形視為調解不成立，如未依期限提出異議者，視為已依該方案成立調解，故提出調解方案之案件有一段待確定期間。

Note: The substantial resolution of a case is based on a determination by the Complaint Review Board. When a mediation case is passed and a mediation program proposed by the Complaint Review Board, in accordance with the stipulations of Article 26 of the Regulations Governing Procurement Contract Fulfillment Dispute Mediation and Fee Standards, the party involved may, within 10 days following receipt of the determination, raise an objection to the Complaint Review Board. This kind of situation is regarded as the mediation not being established. If no objection is raised within the stipulated period of time, the case is regarded as having mediation established in accordance with that mediation program. Cases for which mediation programs have been proposed, therefore, have a period during which they are yet to be determined.

四、出版參考書籍

編印政府採購履約爭議處理案例彙編、採購人員參考手冊（釐清圖利與行政裁量）、政府採購法「異議及申訴」暨「調解」處理手冊（修正再版），供各界參考運用。

五、舉辦系列座談會

為溝通「司法人員與工程人員對行政裁量與圖利罪等之認知差距」，本會洽同法務部於九十年四月二十七日、五月二十日、五月二十八日及六月八日舉辦北、東、南、中四場分區座談會，廣邀工程採購人員與各該地區檢察署檢察官、調查站及審計人員共同與會，由法務部代表針對圖利罪提供相關業務簡報，並針對工程採購中有關行政裁量與刑事責任之範圍與認定標準，進行綜合座談，作為「加速推動公共建設方案」解決對策之一。

may not refuse to enter into the mediation process.

In regard to disputes about the application and review process concerning private participation in infrastructure projects under the Law for the Promotion of Private Participation in Infrastructure Projects, there was one case of this type in 2001.

4. Publishing of Reference Materials

The PCC publishes "Government Procurement Contract Fulfillment Dispute Settlement Cases," "Manual for Procurement Personnel" (clarifying "improper benefit" and administrative determination), "Manual for the Disposition of 'Objections and Complaints' and 'Mediation' Under the Government Procurement Law," and "Mediation Operations Manual" (revised edition) for the reference and use of all sectors.

5. Organizing of Seminars

To address the gap in understanding between judicial personnel and construction personnel about administrative determination and the crime of conveying illegal benefit, the PCC worked with the Ministry of Justice to convene four regional seminars in northern, eastern, southern, and central Taiwan on Apr. 27, May 20, May 28, and June 8, 2001. Large numbers of construction procurement personnel, prosecutorial personnel, and auditing personnel were invited to participate in the seminars together, with Ministry of Justice representatives providing briefings about illegal conveyance of benefit operations and carrying out general discussions about administrative determinations as well as the scope of and standards of determination for criminal responsibility. These seminars were one of the measures used in carrying out the Program for Accelerated Promotion of Public Construction.