

# 爭議處理業務

## Dispute Resolution

Humanism

Quality

Sustainability

本會為處理中央政府各機關及其所屬機關、國立學校、公立醫院及國營事業所主辦工程、財物、勞務採購（含招標、審標、決標、履約及驗收）所衍生之爭議，成立採購申訴審議委員會，專責處理廠商申訴及廠商與機關間之履約爭議調解事宜，置有委員19人，依案件性質由各相關領域委員預審後，再提報全體委員會議通過後始定案。又由於政府採購之範圍包羅萬象，故本會另行遴聘165名學者、專家為諮詢委員，提供專業意見。期能以客觀、公正、公平、合理之態度處理爭議案件。

另依「促進民間參與公共建設法」規定，受理民間參與公共建設案有關申請及審核程序爭議之申訴案件，提供投資者救濟之管道，其作業方式與政府採購申訴審議案件大同小異，九十一年處理此類申訴案件為一件。

### ■ 壹、採購申訴審議業務

#### 一、機制



（一）廠商對於公告金額（新台幣一百萬元）以上標案認為招標機關辦理採購違反法令，經於法定期限內以書面向招標機關提出異議，而不服招標機關之異議處理結果，或招標機關逾法定十五日期限不為處理者，得於十五日內向申訴會申訴。

（二）廠商認為招標機關依政府採購法第一百零一條所為之停權通知有違反本法或不實，經於法定期限內以書面向招標機關提出異議，而無論該案件是否已逾公告金額，對於招標機關之異議處理結果不服，或招標機關逾法定十五日期限不為處理者，均得於十五日內向申訴會申訴。

（三）申訴案件係審議招標機關在招標、審標、決標過程及其通知廠商將予停權處理之行為有無違反政府採購相關法令。

（四）申訴審議結果須作成審議判斷，該審議判斷視同訴願決定。申訴廠商對審議判斷不服者，得向高等行政法院提起行政訴訟。

#### 二、辦理情形

（一）申訴案件統計（88.5.27~91.12.31）

1. 收案處理情形（表一）

2. 處理結果（表二）

（二）法令修正

配合政府採購法之修正公布，於九十一年九月間完成修正「採購申訴審議委員會組織準則」、「採購申訴審議規則」、「採購申訴審議收費辦法」等三項子法。

The PCC has established a Complaint Review Board for Government Procurement in order to handle disputes arising from the procurement of construction work, goods, or labor (including bidding, contract performance, and inspection and acceptance) by central government agencies and their subsidiary agencies, state schools, public hospitals, and state-run enterprises. The Complaint Review Board is responsible for mediating company complaints and contract performance disputes between companies and government agencies, and has 19 members. Cases are first given preliminary screening by the board member covering the relevant field, and are then submitted to the whole committee for approval. Further, because of the very wide range encompassed in the scope of government procurement, the PCC has also recruited 165 scholars and experts to serve as consulting members of the Board and provide their professional opinions. The aim is to resolve disputes in an objective, just, fair, and rational attitude.

In addition, according to the stipulations of the Law for Encouragement of Private Participation in Infrastructure Projects, the operating methods for the handling of complaints about disputes in application and screening procedures for private participation cases are the same in their major points as those for the screening of complaints regarding government procurement. One case involving this type of complaint was handled in 2002.

## I. Screening of Procurement Complaints

### 1. Mechanism

- (1) When a company feels that the tendering agency for a bid with an announced value of NT\$1 million or more has violated the law in its handling of the procurement case, the company may submit a written objection to the tendering agency within the legally set time

limit; if it does not accept the results of the tendering agency's handling of the objection, or if the tendering agency fails to handle the objection within the legally stipulated time limit of 15 days, it may, within 15 additional days, file a complaint with the Complaint Review Board.

- (2) If a company feels that the notification of cancellation of rights by a tendering agency in accordance with Article 101 of the Government Procurement Law is in violation of the law or is not factual, it may file a written complaint with the tendering agency within the legally stipulated time limit; whether or not the case has exceeded the announced amount, if the company does not accept the results of the tendering agency's handling of the objection or if the tendering agency fails to deal with it within the legally stipulated 15 days, then the company may, within 15 additional days, file a complaint with the Complaint Review Board.
- (3) The disposition of complaints depends on whether the bid screening agency has violated laws and regulations related to government procurement in the process of its tendering, screening, and awarding of a bid, on in its behavior in notifying companies that their rights are to be cancelled.
- (4) The results of complaint examination must be compiled into a review judgment, which is seen as the same as an appeal decision. If a company making a complaint does not accept the judgment, it may file an administrative appeal with the Superior Court of Administrative Appeal.

### 2. Disposition of Complaints

- (1) Results of Complaint Settlement (May 27, 1999-Dec. 31, 2002)
- a. Disposition of Complaints (table 1)

表一 table 1

處理狀態 Status of Disposition	案件數 No. of Cases
處理終結 Disposition Completed	1,371
處理中 In Disposition	173
合計 Total	1,544

三、成效

申訴會受理廠商之申訴，對廠商參與政府採購事務提供申訴管道，因對招標機關之招標文件規定、招標過程及決標結果是否合法作成審議判斷書，已逐漸促使招標、決標作業趨向嚴謹、公平，以符合政府採購法之規定，具有維護公平招標作業環境及兼顧政府採購作業時程之功效，且是頂制度符合我國加入世界貿易組織簽訂政府採購協定之政策目標，具有促使政府採購公正、公平、公開之作用。

■ 貳、履約爭議調解業務

一、機制

- (一) 機關與廠商因履約爭議未能達成協議者，得向申訴會申請調解；其屬廠商申請者，機關不得拒絕。
- (二) 調解之程序及其效力，除政府採購法另有規定外，準用民事訴訟法有關調解之規定，故調解成立者，具有訴訟上和解之效力（即等同於確定判決之效力）。

二、辦理情形：

- (一) 調解案件統計（88.5.27~91.12.31）
  - 1. 收案處理情形（表三）
  - 2. 處理結果（表四）

b.Results of Disposition (table 2)

(2) Revision of Laws and Regulations

In line with the promulgation of the revised Government Procurement Law, the PCC completed the revision of three subsidiary laws in September 2002: the Organizational Rules for the Complaint Review Board for Government Procurement, Rules for the Examination of Procurement Complaints, and Rules for the Collection of Fees for the Examination of Procurement Complaints.

3. Effects

The acceptance of complaints by the Complaint Review Board provides a complaint channel for enterprises participating in government procurement matters, and because the Board produces review judgments about whether the bidding document rules of bid-tendering agencies, bid-tendering procedures, and the results of bid awards are legal, bid tendering and bid awarding operations have become more rigorous and fair so that they can comply with the provisions of the Government Procurement Law. This has the effect of maintaining an environment for fair bid-tendering operations while taking the timeliness of government procurement operations into consideration at the same time. This system also conforms to the policy goal of signing the Government Procurement Agreement upon accession to the WTO, and it has the function of promoting justice, fairness, and openness in government procurement.

■ II. Mediation of Contract Performance Disputes

1. Mechanism

- (1) When a government agency and a company are engaged in a

表二 table 2

處理狀態 Status of Disposition	案件數 No. of Cases		百分比 Percentage
實體終結 Substantially Resolved 602	有理由 With Reason	267	44.4%
	部分有理由 With Partial Reason	57	9.5%
	無理由 Without Reason	278	46.1%
程序終結 Procedurally Resolved	769		
處理中 In Disposition	173		
合計 Total	1,544		





北宜高速公路



## （二）法令修訂

配合政府採購法之修正公布，於九十一年九月間完成訂定「採購履約爭議調解規則」、「採購履約爭議調解收費辦法」二項子法，並廢止原施行之「採購履約爭議調解暨收費規則」。

## 三、成效

履約爭議調解提供主辦機關與廠商在仲裁與訴訟之外另一排難解紛之管道，相對於仲裁與訴訟，調解過程較不拘形式、耗時較少，依政府採購法規定，調解成立者，具有法院確定判決之效力。履約爭議經調解後，多數主辦機關認可消除其承辦人員圖利他人之疑慮，廠商方面亦認為此項

制度使彼等既免於訟累，復能加速問題之解決，故對於政府採購之推動極有助益。

## 參、出版品

為使採購機關與廠商了解採購爭議處理制度之相關法令、程序及常見之爭議問題，本會申訴會編印有採購人員參考手冊（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、政府採購申訴案例彙編（一）、（二）及政府採購履約爭議處理案例彙編（一）、政府採購法爭議處理手冊，以供各界參閱，得以避免日後發生類似問題或據以參考解決爭議。

表三 table 3

處理狀態 Status of Resolution	案件數 No. of Cases
處理終結 Resolution Completed	1,288
處理中 In Resolution	314
合計 Total	1,602

表四 table 4

處理結果 Results of Resolution		案件數 No. of Cases	百分比 Percentage
實體終結 Substantially Resolved 1,055	成立 Established	658	62.8%
	不成立 Not Established	392	37.2%
	待確定 Waiting Determination	5	
程序終結 Procedurally Resolved		233	
處理中 In Resolution		314	
合計 Total		1,602	

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，依政府採購法第八十五條之四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 approved and a mediation program proposed by the Complaint Review Board, in accordance with the stipulations of Article 85-4 of the Government Procurement Law the party involved may, within 10 days following receipt of the determination, file an objection with the Complaint Review Board. In this situation, the mediation is regarded as not having been established. If no objection is filed within the stipulated period of time, the case is regarded as one with mediation having been established in accordance with the proposed mediation program. Cases for which mediation programs have been proposed, therefore, have a period of time during which they are waiting to be determined.

contract performance dispute and are unable to come to an agreement, they may apply to the Complaint Review Board for mediation. Applications that are submitted by a company may not be rejected by the agency concerned.

- (2) Unless the Government Procurement Law contains provisions to the contrary, the stipulations of the Code of Civil Procedures regarding mediation may be applied to the procedures and the effect of mediation. When cases are accepted for mediation, therefore, they have the effect of amicable settlement under legal procedures (that is, the effect is the same as a legal verdict).

## 2. Handling of Contract Disputes

- (1) Mediation of Disputes (May 27, 1999 - Dec. 31, 2002)

a. Disposition of Complaints (table 3)

b. Results of Disposition (table 4)

- (2) Revision of Laws and Regulations

In line with the promulgation of the revised Government Procurement Law, the establishment of two subsidiary laws—Mediation Rules for Procurement Contract Performance Disputes and Mediation Fee Collection Methods for Procurement Contract Performance Disputes—was completed in September 2002, and the original Rules of Mediation of Dispute Arising from the Performance of Procurement Contract and Charges.

## 3. Results

The mediation of contract disputes provides the agencies in charge of construction and the companies that are involved a third channel, in addition to arbitration and litigation, for resolving problems and

disputes. Compared with arbitration and litigation, the mediation process is relatively informal and takes less time. According to the provisions of the Government Procurement Law, when a mediation case is established its results have the effect of a court verdict. After a contract performance dispute is mediated, most of the agencies in charge agree that it removes suspicion that their personnel are conveying illegal benefits to others, and the companies feel that this system allows them to avoid the tedium of litigation while speeding up the resolving of problems. It is highly beneficial, therefore, to the implementation of government procurement.

## III. Publications

To help give government agencies involved in procurement as well as supplier companies an understanding of the laws and regulations, procedures, and frequent causes of disputes related to the procurement dispute resolution system, the PCC's Complaint Review Board for Government Procurement has produced a "Manual for Procurement Personnel" (clarifying illegal conveyance of benefit and administrative decision-making), "Manual for the Government Procurement Law (Objections and Complaints) and Mediation Resolution," "Compendium of Government Procurement Complaint Cases (I) and (II)," "Compendium of Government Procurement Contract Performance Dispute Resolution Cases (I)," and "Government Procurement Law Dispute Resolution Manual." These publications are provided for the reference and use of all sectors in avoiding the occurrence of similar problems in the future, and in resolving disputes.



宜蘭二結溪河堤（生態工法）