

爭議處理業務

Dispute Resolution

壹 採購申訴審議業務

一、申訴機制

- (一) 申訴案件係審議招標機關在辦理招標、審標、決標過程與結果及其通知廠商將予停權處分之行為有無違反政府採購相關法令。
- (二) 廠商對於公告金額（新臺幣100萬元）以上之採購案，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，或招標機關於法定15日期限不為處理者，得於15日內向該管申訴會申訴。
- (三) 廠商認為招標機關依政府採購法第101條第1項各款所為之停權通知有違法或不實者，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，或招標機關於15日期限不為處理者，均得於15日內向該管申訴會申訴。
- (四) 另依據民間參與公共建設法第47條第1項、民間參與公共建設申請及審核程序爭議處理規則第7條規定，參與公共建設之申請人對於促進民間參與公共建設案件之申請及審核程序認為違反法令，經於法定期限內以書面向主辦機關提出異議，而不服主辦機關之異議處理結果，或主辦機關於法定20日期限不為處理者，得於30日內向本會申訴。
- (五) 申訴審議結果須作成審議判斷，該審議判斷視同訴願決定。廠商對於申訴審議判斷不服者，得向該管高等行政法院提起行政訴訟。
- (六) 申訴會受理廠商之申訴，對於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，以促成招標、審標、決標作業趨向公平嚴謹，具有維護公正、公平、公開之招標作業環境及兼顧政府採購效益，並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。

I. Review of Government Procurement Complaints

1. Complaint Mechanism

- (1) Complaint cases are reviewed to determine whether bid tendering agencies have violated laws related to government procurement during the bid tendering, bid screening, or bid awarding processes, or in notifying a company of the cancellation of bidding rights.
- (2) If 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 Government procurement case, it may submit a written objection to the tendering agency within the legally stipulated time limit. If the company 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 prescribed time limit of 15 days, the company may, within the following 15 days, file a complaint with the Complaint Review Board for Government Procurement.
- (3) If a company feels that the notification of cancellation of rights by a tendering agency violates the stipulations of Paragraph 1 of Article 101 of the Government Procurement Law, it may file a written objection with the tendering agency within the legally stipulated time limit; whether or not the case exceeds the announced amount, if the company does not accept 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, then the company may, within the following 15 days, file a complaint with the Complaint Review Board for Government Procurement.
- (4) According to Paragraph 1 of Article 47 of the Law for the Promotion of Private Participation in Infrastructure Projects, an applicant for participation in infrastructure projects who feels that the handling of the application or screening process violates the law may file a written objection with the tendering agency within the legally stipulated time limit; if the applicant does not accept 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 20 days, then the applicant may, within the ensuing 30 days, file an appeal with the PCC.
- (5) The results of a complaint review must be codified into a review judgment, which is viewed as an appeal decision. If a company does not accept a review decision regarding its complaint, it may file an administrative appeal with the Superior Court of Administrative Appeal.
- (6) The Complaint Review Board provides a channel for the filing of complaints by companies participating in government procurement. Because the Board produces judgments about whether the bidding document rules for tendering agencies, bid-tendering procedures, and awarding of bids are legal, the tendering, screening, and awarding of bids have become more fair and rigorous, and a just, fair, and open bid-tendering environment has been maintained while the efficiency of government procurement has also been taken into consideration. This is in conformity with Taiwan's policy goal of signing the Government Procurement Agreement following its accession to the World Trade Organization.

二、相關統計 Related Statistics

申訴案件辦理成效表（88.05.27—94.12.31）

Complaint Cases (May 27, 1999 — Dec. 31, 2005)

處理狀態 Status of Disposition	案件數 Amount of Complaint Cases
收案總數 Complaint Cases Received	3,111
處理終結 Complaint Cases Resolved	2,989
處理中案件 Complaint Cases In Process	122

申訴案件處理情形（88.05.27—94.12.31）

Results of Complaint Cases (May 27, 1999 — Dec. 31, 2005)

實體終結 1,441	有理由 Sustain	672
Substantially Resolved	部分有理由 Partially Sustain	85
1,441 cases	無理由 Overrule	684
程序終結 Procedurally Resolved		1,548
處理中 In Process		122
合 計 Total		3,111

促參申訴案件辦理成效表（89.05.17—94.12.31）

Private Participation Complaint Cases (May 17, 2000 — Dec. 31, 2005)

處理狀態 Status of Disposition	案件數 Amount of Complaint Cases
收案總數 Complaint Cases Received	16
處理終結 Complaint Cases Resolved	14
處理中案件 Complaint Cases In Process	2

促參申訴案件處理情形（89.05.17—94.12.31）

Results of Private Participation Complaint Cases (May 17, 2000 — Dec. 31, 2005)

實體終結 10	有理由 Sustain	5
Substantially Resolved	部分有理由 Partially Sustain	1
10 cases	無理由 Overrule	4
程序終結 Procedurally Resolved		4
處理中 In Process		2
合 計 Total		16

貳 履約爭議調解業務

一、調解機制

- (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) 調解之程序及效力，除政府採購法令有規定外，準用民事訴訟法有關調解之規定，故調解成立者，具有訴訟上和解同一效力（即與確定判決有同一效力）。

參 技師懲戒覆審業務

本會依技師法第44條及技師懲戒及技師懲戒覆審委員會組織規程第1條之1、第11規定，由各部會代表及具有工程、法律之委員組成技師懲戒覆審委員會，辦理各類技師違反技師法相關法規之技師懲戒覆審業務。懲戒覆審案件辦理情形表如下：

II. Mediation of Contract Disputes

1. Mechanism

- (1) When a government agency and a company are unable to reach an agreement over a contract dispute, they may apply to the Complaint Review Board for mediation. The agency concerned may not reject such an application submitted by a company.
- (2) In the absence of Government Procurement Law provisions to the contrary, the stipulations of the Code of Civil Procedure regarding mediation will be applied to the procedures and effects of mediation; the results of mediation, therefore, have the same effect as amicable settlements reached under legal procedures (that is, the effect is the same as a legal verdict).

III. Review of Disciplinary Action against Professional Engineers

The PCC has established a Professional Engineers Disciplinary Committee (First Grade) and Professional Engineers Disciplinary Committee (Second Grade), in accordance with the stipulations of Article 44 of the Technician's Law and Article 1-1 of the Organizational Regulations of the Professional Engineers Disciplinary Committees (First and Second Grades), to handle the review of disciplinary action taken against Professional engineers who violate the provisions of the Technician's Law. The committees are made up of representatives of ministries and commissions, as well as members with engineering and legal backgrounds. The handling of disciplinary review cases is detailed in the following chart:

> 淡水漁人碼頭



二、相關統計 Related Statistics

調解案件辦理情形表1(88.05.27—94.12.31)

Mediation Cases (May 27, 1999 - Dec. 31, 2005)

處理狀態	Status of Disposition	案件數	Amount of Complaint Cases
收案總數	Complaint Cases Received		3,687
處理終結	Complaint Cases Resolved		3,365
處理中案件	Complaint Cases In Process		322

調解案件辦理情形表2(88.05.27—94.12.31)

Results of Mediation (May 27, 1999 - Dec. 31, 2005)

實體終結	2,779	成立	agree	1,863
Substantially Resolved		不成立	disagree	916
2,779 cases		待確定	waiting for answer	0
程序終結	Procedurally Resolved			586
處理中	In Process			322
合 計	Total			3,687

技師懲戒覆審委員會案件數量及處理情形 (89.10.01-94.12.31)

Cases Handled by the Professional Engineers Disciplinary Committee (Second Grade) (Oct. 1, 2000 -Dec. 31, 2005)

實體終結 Substantially Completed	懲 戒 Disciplined	廢止（含修法前之撤銷）執照 Revocation of License	4
		停止執業 Cessation of Practice	46
		申誡 Reprimand	0
		警告 Warning	0
	不予懲戒 Not Disciplined		1
程序終結 Procedurally Completed			1
處理中 In Process	原有案件 Original Cases		11
	新增案件 New Cases		0
覆審案件總數 Total Amount of Cases			63

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85條之4第2項規定當事人得於送達後10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 revision of a case is based on the determination made by the Complaint Review Board. When a mediation case is accepted and a mediation project is proposed by the Board, the parties involved may, in accordance with the stipulations of Article 85-4, Item 2 of the Government Procurement Law, file an objection with the Board within 10 days after receive the notification. In this case, the mediation is regarded as not having been reached. If no objection is filed within the above-mentioned of time, the mediation is regarded as having been established in accordance with the proposed project. Cases for which a mediation program has been proposed, therefore, have a period of waiting time.