

Regulations Governing the Mediation for Dispute Regarding the Performance of the Contract for Government Procurement

Chapter I General Principles

Article 1

These Regulations are prescribed pursuant to Paragraph 4 of Article 85-1 of the Government Procurement Act (hereinafter referred to as the “Act”).

Article 2

Application for mediation shall be made to the Complaint Review Board for Government Procurement ("CRBGP") established by the competent authority if the mediation is in connection with dispute regarding performance of procurement contract of the Central Government. Application for mediation shall be made to the CRBGP established by the municipal or the county (city) governments if the mediation is in connection with dispute regarding performance of procurement contract of local governments.

Where the municipal or the county (city) governments do not establish a CRBGP but entrust the competent authority in handling the related affairs, application for mediation shall be made to the CRBGP established by the competent authority.

Article 3

If the applicant wrongfully applied to the CRBGP without jurisdiction to conduct the mediation, the said CRBGP shall forward the application to the CRBGP having jurisdiction to conduct the mediation and inform the applicant and the opponent party to that effect.

Article 4

The CRBGP shall first review the procedural aspect of the mediation, review of substantive issues shall be conducted only in respect of mediation which cannot be rejected on procedural grounds.

When conducting the procedural review as prescribed in the preceding paragraph, the CRBGP finds that the application is not in conformity with the format, the CRBGP shall notify the applicant to make the correction within a specified time limit if said inconformity can be corrected.

Article 5

All mediation related documents shall be organized and filed on a per-case basis.

Chapter II Mediation Procedure

Article 6

The applicant shall submit a written application and deliver copies of said written application to each of the opponent parties. The written application shall include the following particulars and affix thereon the signature or seal of the applicant or its agent:

1. the name, birth date, telephone number and address of the applicant; if the applicant is a juristic person or other organization with an administrator or responsible person, the name, office and business place of the applicant and the name, birth date, telephone number, domicile or residence of its administrator or responsible person;
2. the name, birth date, telephone number, domicile or residence of the agent, if any;
3. the name of the opponent party;
4. the matters to be mediated, the legal relationship regarding subject matter of the mediation, details of the disputes, and evidence;
5. the attachments and total number thereof; and
6. year, month and day of the application.

The application shall be prepared in Chinese language. If any material enclosed therein is in foreign language, a Chinese translation of such material relevant to the mediation shall be submitted therewith. Depending upon the need, the CRBGP may also notify the applicant to submit Chinese translation of other parts of the material.

Article 7

The application for mediation may be filed by an agent on behalf of the applicant, and said agent shall submit a power of attorney indicating the name, birth date, occupation, telephone number and domicile or residence of the agent.

Applicant without domicile, office, or business place in the Republic of China (hereinafter referred to as "R.O.C.") shall appoint an agent domiciled within the R.O.C. to file the application on its behalf.

Article 8

An agent has the authority to conduct all acts of mediation with regard to the action for which the agent is retained, except that the agent may not, without special authorization for the agent to do so: (i) abandon the claim; (ii) admit the claim; (iii) voluntarily dismiss the action; (iv) settle the case; or (v) appoint another agent.

Any restriction on the authority provided in the preceding paragraph shall be specified in the Power of Attorney.

Article 9

The opponent party shall present its response to the application for mediation in writing to the CRBGP within 15 days from the date following the date of receipt of copy of the application. A copy of said response shall also be delivered to the applicant at the same time.

If any of the parties presents to the CRBGP any document during the mediation proceeding, a copy of the same shall also be delivered to the other party at the same time.

Article 10

Application for mediation that falls within any of the following circumstances shall be submitted to the CRBGP meeting to decide rejecting the application:

1. the party to the mediation is not a competent party;
2. an arbitration, mediation or civil action has been applied with respect to the dispute in question, provided that such procedure has already been adjourned by mutual agreement of the parties;
3. a mediation had been conducted by a legal entity over the dispute in question, which was unsuccessful;
4. the dispute had been judged by courts and a final judgment had been rendered;
5. the applicant is a person without capacity or with limited capacity not legally represented by its legal representative;
6. there is lack of authorization of the agent if the mediation is applied by an agent;
7. the application for mediation is not in conformity with the format;

8. the applicant failed to pay mediation fee after being notified to make a supplementary payment within a specified time-limit;
9. the supplier objects to proceed to mediation;
10. notification to be served to the opponent party shall be effectuated by constructive notice or to be made in a foreign country;
11. the dispute for mediation is irrelevant to government procurement; or
12. any other circumstance occurs where the application should be rejected.

Article 11

After the application for mediation has been reviewed according to the preceding Article and found not falling within any of the circumstances requiring a rejection against the application, the chairperson of the CRBGP shall appoint 1-3 member(s) as the mediator(s) to the mediation. The mediator(s) shall designate the date of mediation as soon as possible and notify the parties or their agents to appear on said date.

In mediation proceeding referred to in the preceding item, the CRBGP may appoint certain consulting members for consultancy if necessary.

Article 12

The mediation shall be held at the office of CRBGP, or such other appropriate place if necessary.

Unless otherwise provided, the mediation prescribed in the preceding paragraph shall proceed in private.

Article 13

In conducting the mediation, the CRBGP may entrust government authorities, schools, associations, or persons having professional knowledge and experience to provide examination services, and may also invite academics and experts or call the relevant persons for explanations or request the parties of the mediation to provide relevant documents and materials.

With respect to the avoidance of conflict of interests of the person for examination and the consulting academics and experts as prescribed in the preceding paragraph, Article 13 of the Organizational Regulations of Complaint Review Board for Government Procurement in relation to the avoidance of conflict of interests shall apply *mutatis mutandis*.

Article 14

The mediator may, *ex officio*, inform a third party having legal interests in the dispute for mediation to participate in the mediation proceeding.

Article 15

In order to explore the legal relationship of the case and the issues of the dispute argued by both parties, when conducting the mediation, the mediator may hear the testimony of: the parties, persons with professional knowledge and experience, persons knowing the details of the case, or other interested party; survey the status of the place or the subject-matter; and investigate the evidence if necessary.

The party refuses to present statements or provide relevant materials without justifiable reasons, the mediator may offer suggestions for mediation with reference provided at that time.

Article 16

The mediator shall conduct the mediation in an amicable and sincere manner; counsel the parties appropriately; consider and propose a fair resolution of the dispute so as to maintain harmony between the parties.

Article 17

If one or both of the parties failed to appear at the mediation date, the mediator may, after taking related circumstances into consideration, deem the mediation unsuccessful or designate another date for commencing the mediation.

Article 18

During the mediation process, the mediator may, in exercising his/her authority, propose a written suggestion for resolution in the name of the CRBGP and demand the parties to indicate within the specified time limit whether they agree or disagree with such suggestion.

If the entity does not agree with such suggestion for mediation, it shall report to its superior entity for approval before providing its written explanation to the CRBGP and the supplier in question. The forgoing shall apply if the supplier is a government entity, public school or public owned enterprise.

The parties fail to indicate whether they agree or disagree with such suggestion within

the specified time limit referred to in paragraph 1, and still fail to do so after the CRBGP demand the parties to indicate within the specified time limit again, the CRBGP may regard the parties disagree with such suggestion for mediation.

Article 19

The mediation proceeding shall be recorded in the minutes of the mediation, details of the mediation proceeding, the result of the mediation, the extension of the time limit and other supplementary matters.

The mediator shall prepare, document manifesting the successful conclusion of the mediation; document notifying the resolution for the mediation or certificate certifying that the mediation is not successful; recording the details of the mediation proceeding which, together with the related evidence and documents, shall be submitted to the CRBGP meeting for review.

Certified copy of the document manifesting the successful conclusion of the mediation or the document notifying the resolution for the mediation or the certificate certifying that the mediation is not successful, shall be served to the parties or interested parties participating in the mediation proceeding within 10 days from the date following the date of approval by the CRBGP meeting.

Article 20

Mediation shall be completed within four months from the date following the date of receipt of the application for mediation provided that it may be extended if the parties agree to an extension.

If the written application is to be corrected or the mediation fee is failed to pay, the said period of mediation referred to in the preceding paragraph shall begin with the date following the date the correction is made or the mediation fee is paid. During the mediation proceeding, if the party supplements its written reasons, provides materials, or supplements to the claim that extra mediation fee shall be collected, the said period shall begin with the date following the date that the last supplement is made, the material is provided or the extra mediation fee is collected.

Article 20-1

During mediation proceeding, the parties may stay the proceeding by written consent

to the CRBGP. The parties stay the proceeding by oral consent on the mediation meeting date shall be recorded in the minutes of mediation. The parties may only consent to stay the proceeding once.

Any party of whom consents to stay the mediation proceeding may continue the proceeding in written application.

If the parties fail to continue the mediation proceeding within 4 months after the date following the date of notifying such staying consent to the CRBGP, the application of mediation shall be deemed to withdrawal.

Under the circumstance referred to in paragraph 1, if the CRBGP regard it is necessary to maintain public welfare, may continue the mediation proceeding within 4 months.

Article 21

If an application for mediation is withdrawn, it shall be deemed as not having been made.

The withdrawal prescribed in the preceding paragraph shall be notified to the other party by the CRBGP.

Chapter III Supplementary Provisions

Article 22

The mediator, executive secretary, staff, consulting member, academic or expert shall keep confidential, all vocational or business secrets or matters involving the personal privacy of others which came to their knowledge during the course of handling or participating in the mediation proceeding.

Article 23

In case that the document manifesting the successful conclusion of the mediation, certificate certifying that the mediation is not successful, or the document notifying the resolution for the mediation is served by post, postal service certification for mediation documents shall be made.

Unless otherwise provided in the preceding paragraph, the regulations regarding service of documents provided in the Civil Procedure Code shall apply *mutatis mutandis* with respect to the service of, the document manifesting the successful conclusion of the mediation, certificate certifying that the mediation is not successful, or the document notifying the resolution for the mediation.

Article 24

Form of documents related to these Regulations shall be prescribed by the competent authority.

Article 25

These Regulations shall take effect on the date of promulgation.