

Regulations Governing the Complaint Review for Government Procurement

Article 1

These Regulations are prescribed pursuant to Paragraph 5 of Article 80 of the Government Procurement Act (hereinafter referred to as the "Act").

Article 2

Where the value of a procurement reaches the threshold for publication, or not reaching the threshold for publication but a dispute arising from not refunding or returning of bid bond, or recovery thereof prescribed in paragraph 2 of Article 31 of the Act, a supplier may file a written complaint with the Complaint Review Board for Government Procurement ("CRBGP") as established by the competent authority, or the municipal or the county (city) governments, depending upon whether the procurement is conducted at the level of central government or local government, within fifteen days from the date following the date of receipt of the disposition if the supplier objects to the disposition, or from the expiry of the period specified in paragraph 2 of Article 75, paragraph 1 of Article 85 of the Act if the entity fails to dispose the case within the period.

Irrespective of whether the value of procurement reaches the threshold for publication or not, a supplier may file a written complaint with the competent CRBGP within fifteen days from the date following the date of receipt of the disposition on the protest filed in according with paragraph 1 of Article 102 of the Act if the supplier objects to the disposition, or from the expiry of the specified period if the entity fails to dispose the case within said period.

Where municipal or county (city) governments do not establish a CRBGP but entrusted the competent authority in handling the Complaint, the supplier may file the Complaint with the CRBGP established by the competent authority.

Article 3

The complaining supplier shall prepare a written complaint including the following particulars and affix its signature or seal thereon,

1. the name, address and telephone number of the complaining supplier and the name, sex/gender, birth date, and domicile or residence of the responsible person;
2. the entity which handled the protest;
3. the facts and reasons of the Complaint;

4. evidence; and
5. year, month and day of the written complaint.

Article 4

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

Article 5

Complaint may be filed by an agent on behalf of the complainant, and said agent shall submit a power of attorney indicating the name, sex/gender, birth date, occupation, telephone number and domicile or residence of the agent.

Complaining supplier without any 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 Complaint on its behalf.

Article 6

In relation to matters being authorized, the agent of a Complaint shall have all the rights to conduct the complaining activities. However, unless otherwise having been specifically authorized, the agent shall have no right to withdraw the Complaint or appoint agent.

Any limitation to the agent as prescribed in the preceding paragraph shall be specifically indicated in the Power of Attorney.

Article 7

When filing a complaint, the supplier shall also provide a copy of the Complaint and related documents to the entity. The entity shall present its response in writing and submit related documents to the competent CRBGP within ten days from the date following the date of receipt of such copy.

Article 8

When the entity fails to present its response within the prescribed time limit upon receipt of the copy of the Complaint, the CRBGP may either demand in writing

requesting the entity to response, or proceed to review the Complaint.

Article 9

Any supplier who wrongfully files its Complaint to entity without jurisdiction over the Complaint, the date on which such Complaint is filed with the wrong entity shall be deemed as the date of receipt of the Complaint.

The entity referred to in the preceding paragraph shall, within 3 days from the date following the date of receipt of the Complaint, forward the Complaint to the CRBGP with jurisdiction over the Complaint and inform the supplier to that effect.

Article 10

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

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

Article 11

The Complaint that falls within any of the following circumstances shall be submitted to the CRBGP meeting to decide rejecting the Complaint:

1. unless otherwise provided in paragraph 2 of Article 2 of these Regulations, or paragraph 2 of Article 31 of the Act, the value of procurement does not reach the threshold for publication;
2. the Complaint is filed after the expiration of the period provided by law;
3. the Complaint is not in conformity with the format and can not be corrected, or the supplier fails to correct the same after being notified to correct;
4. the Complaint is filed with the CRBGP without jurisdiction and cannot be forwarded to other CRBGP in accordance with Article 9 of these Regulations;
5. the Complaint is filed in respect of the same subject matter having been reviewed and decided or withdrawn;
6. the procuring entity nullifies or changes its disposition result pursuant to the request of the complaining supplier;
7. the complaining supplier is not a competent party;
8. the Complaint is filed for dispute in relation to the performance of the contract in

- question, and the supplier fails to apply to convert to mediation;
9. the Complaint is filed for matters not related to government procurement; or
 10. any other circumstance occurs where the Complaint should be rejected.

Article 12
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Article 13
After the Complaint is reviewed according to Article 11 of these Regulations and does not fall within any of the circumstances requiring a rejection against the Complaint, the chairperson of the CRBGP shall appoint 1-3 member(s) as the pre-review member(s) to review the substantive issues of the Complaint.

Article 14
When reviewing the Complaint, the CRBGP may select 1-3 member (s) as the consulting member(s) for consultancy.

Article 15
The CRBGP may, *ex officio* or upon request, inform a complaining supplier or an entity to present their opinions orally at a place designated by the CRBGP.

Article 16
In conducting a review, the CRBGP may entrust government authorities, schools, associations, or persons that have 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 entity or the supplier to provide relevant documents and materials.

With respect to the avoidance of conflict of interests of the academics and experts referred to in the preceding paragraph, the Organizational Regulations of the Complaint Review Board for Government Procurement in relation to the avoidance of conflict of interests shall apply *mutatis mutandis*.

Article 17
The pre-review commissioner(s) may, after submitting to the CRBGP meeting and obtaining the approval therefrom, notify the procuring entity to suspend the procuring procedures, if necessary. However, when the pre-review member(s) deem(s) that the situation is so urgent that should be disposed immediately, the CRBGP may inquire in

writing, the opinions of the members, and notify the procuring entity to suspend the procuring procedures if written consents are obtained from majority of the members.

Article 18

The pre-review member(s) shall prepare pre-review opinion stating the handling procedure for the Complaint. The pre-review member(s) shall submit the pre-review opinion, together with the related documents and evidence, to the CRBGP meeting for review.

Article 19

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Article 20

The CRBGP shall prepare original copy of the decision of the CRBGP in accordance with the resolutions of the CRBGP meeting stating the following:

1. the name and domicile, residence or place of business of the complaining supplier and the name and domicile or residence of the responsible person;
2. the name and domicile or residence of the agent, if any;
3. the procuring entity;
4. ruling, fact and reasons of the decision, however, fact may be omitted if the decision is that the Complaint is not acceptable; and
5. year, month and day.

Certified copies of the decision as prescribed in the preceding paragraph shall be completed within 10 days after the review and served to the complaining supplier and the procuring entity.

Article 21

The decision as prescribed in the preceding paragraph shall indicate whether the procurement had been conducted by the procuring entity in a manner that is in breach of Laws and Regulations. Where there is a breach, the CRBGP may recommend the procuring entity ways to proceed.

The CRBGP shall take the public interest, the interest of the relevant suppliers, and

other relevant circumstances into account when making a recommendation or notification under the preceding paragraphs.

Article 22

The review decision shall include a statement which states that in case of any objection to the review decision, the parties may file an administrative suit with the Administrative Court within two months from the date following the date of receipt of the review decision.

In the event that the statement as prescribed in the preceding paragraph is not included in the review decision or contains wrong information, Articles 91 and 92 of the Administrative Petition Act shall apply *mutatis mutandis*.

Article 23

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Article 24

In case that there is an error, miscalculation, or other similarly obvious mistake found in the review decision, the CRBGP may, *ex officio* or upon request, make the correction. The forgoing shall also apply if there is any inconsistency between the certified copy and the original copy of the review decision.

Article 25

The time-limit for review prescribed in paragraph 2 of Article 78 of the Act shall begin with the date following the date the correction is made if the Complaint is to be corrected, or, if the complaining supplier supplements its reasons for the Complaint within the time-limit for review, the date following the date that the last supplement is made.

Article 26

In case that the Complaint is withdrawn in accordance with Article 81 of the Act, the CRBGP shall terminate the review immediately and inform the complaining supplier and the procuring entity.

Article 27

If the supplier wrongfully filed the Complaint for dispute in relation to the performance of the contract in question, it may apply to convert to proceed to mediation. In case that the supplier does not apply for conversion, the CRBGP shall inform the supplier that it may do so.

Article 27-1

If the supplier or interested party objects to the disposition of the CRBGP with respect to the review procedure, the objection to the said disposition may only be filed concurrent with the objection to the review decision.

Article 28

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

Article 29

The member, executive secretary, staff, consulting member, academic or expert shall keep confidential, vocational or business secret of others or matters involving the privacy of others, obtained during the course of participating in the Complaint proceeding.

Article 30

In case that the review decision is served by post, postal service certification shall be made.

Unless otherwise provided in the preceding paragraph, the regulations regarding the service provided in the Administrative Procedure Act shall apply *mutatis mutandis* with respect to the service of the documents of the Complaint.

Article 31

The forms of documents pertaining to these Regulations shall be prescribed by the competent authority.

Article 32

These Regulations shall take effect on May 27, 1999.

The amendments to these Regulations shall take effect on the date of promulgation.