

Detailed Regulations on Government Procurement-Related Complaint Review Procedure

January 11, 1999
Council of Government Procurement Review decision
January 11, 2008 – Revision
March 7, 2014 – Revision
April 4, 2014 – Revision

The Detailed Regulations on Government Procurement-related Complaint Review Procedure are defined below.

1. Filing Complaints

(1) Definition of agents capable of having supplied goods or services

"Agents who supplied or were capable of supplying goods or services" as described in 2.(1) of the Government Procurement-Related Complaint Review Procedure (December 14, 1995 Council of Government Procurement Review agreement; hereafter referred to as "the Procedure") are those outlined below who have or had an interest in participating in the procurement procedure.

1. Agents who participated in bidding (excluding those who supplied goods or services)

- 1) Agents who participated in open competitive bidding
- 2) Agents who participated in designated competitive bidding
- 3) Agents who engaged in any way in limited-tender contract procedures

2. Agents who planned to participate in bidding but did not

- 1) Agents who did not participate in bidding due to procurement procedure violations
- 2) Agents who were unable to participate because the procuring entity used designated competitive bidding or limited-tender contracts
- 3) Agents who were not authorized to participate in bidding

3. Agents indirectly involved in bidding procedures (including for limited-tender contracts)

(2) Termination of consultations

The consultations described in 2.(2) of the Procedure may be terminated by either the supplier or the procuring entity.

(3) Handling of consultation period

If no resolution to the complaint has been reached when the consultations described in 2.(2) of the Procedure are concluded, the active-complaint period is considered to have been suspended while the parties were engaged in consultations; this period of time is not included in the active-complaint period.

2. Period

(1) Definition of holidays of national administrative organs

Holidays of national administrative organs are defined as the days listed in Article 1 Item 1 of the Act on Holidays of Administrative Organs (Act No. 91 of 1988).

3. Participants

(1) Notification of intent to participate

The notification of intent to participate described in 4.(3) of the Procedure must be in writing, and must clearly indicate the agent's desire to participate as well as the reasons for wishing to do so.

(2) Withdrawal of participation

- i. The withdrawal of participation described in 4.(4) of the Procedure must be submitted in writing.
- ii. If a withdrawal of participation as described in 4.(4) of the Procedure is submitted, the Board must notify all parties involved of such without delay.

4. Complaint Review Procedure

(1) Deadline for in the case of filing complaint by mail

A complaint filed in accordance with 5.(1) of the Procedure via postal mail shall be considered to have been submitted on the day the mail is postmarked. If the mail is not postmarked or if the postmark is unclear, the submission date shall be calculated based on the number of days that postal delivery would usually take.

(2) Leeway for interpretation of 10 working days

With regard to the rejection of complaints filed as described in 5.(3) of the Procedure, it may be difficult to reach a conclusion within 10 days. Accordingly, while rejection within 10 working days after receipt of the complaint is taken as the general rule, in exceptional cases and depending on individual circumstances, a complaint may be rejected 10 working days or later after it is filed.

(3) Relief measures for erroneous instructions

If the procuring entity or secretariat for the Government Procurement Review Board erroneously indicates an active-complaint period longer than the period actually designated, any complaint filed within this erroneously designated period shall be considered as having been filed within the designated active-complaint period.

(4) Definition of procuring entity

The procuring entity is defined as a body engaging in the procurement of goods or services or procurement for public projects or other work. Such bodies are national administrative organs (all organizations covered by the Accounts Law, including all their

internal sub-divisions, independent organs, attached organizations and their organizations and local branch offices provided for in the National Government Organization Law) or government-affiliated organizations (organizations listed in Annex I, Appendix 3 to the Agreement on Government Procurement done at Marrakesh on April 15, 1994 or Annex I, Appendix 3 to the Revised Agreement amended by the Protocol Amending the Agreement on Government Procurement, done at Geneva on March 30, 2012, including organizations described in Attachment 4 of the Operational Guidance on Procedures for Government Procurement etc. (March 31, 2014 agreement between related ministries)).

(5) Definition of head of the procuring entity

- i. The head of the procuring entity is defined as the head of a ministry or agency (the head of a ministry or agency as described in Article 20 Item 2 of the Public Finance Act, the same shall apply hereinafter) or the head of a government-affiliated organization. However, in accordance with Article 13 of the Public Accounting Act, if the head of a ministry or agency delegates affairs and authority under the jurisdiction of budget expenditure, the officer with such authority shall be considered the head of the procuring entity.
- ii. If affairs and authority is delegated in accordance with laws, regulations, etc. concerning the government-affiliated organization, the officer with such authority shall be considered the head of the procuring entity.

(6) Method of applying for approval of representatives and other matters

- i. The written certification showing the authority of a lawyer acting as a representative as described in 5.(8)(8) of the Procedure must contain the names of the bar association to which the representative belongs and the representative's law office.
- ii. Requests for the approval of a person other than a lawyer as a representative as described in 5.(8)(6) of the Procedure must be submitted in writing, and must include the name of the candidate representative and information on their occupation, their relation to the party to be represented, and other details necessary to determine whether the person is fit to represent.
- iii. The written certification of the authority of the representative as described in 5.(8)(8) of the Procedure must be attached to the written request described in (2) above.

(7) Method for applying for approval of assistants and other matters

Requests for approval as described in 5.(8)(10) of the Procedure must be submitted in writing, and must include the name of the candidate assistant and information on their occupation, their relation to the party to be assisted, and other details necessary to determine whether the person is fit to assist.

(8) Definition of agent with practical interest

An agent with practical interest in the procurement in question as described in 5.(8)(16) of the Procedure is defined as a technical specialist, advisor, architect or similar involved in the procurement process or an agent involved in a personnel administration relationship with the complainant, including special connection.

(9) Complaint withdrawal

- i. Withdrawal of complaint as described in 5.(9) of the Procedure must be submitted in writing.
- ii. If a notification of complaint withdrawal as described in 5.(9) of the Procedure is submitted, the Board must notify all parties involved of such without delay in writing.

(10) Non-disclosure of the related procuring entity report to parties other than those involved in the complaint procedure

The Board shall ask the complainant and participants not to disclose the details of the report to parties not involved in the complaint procedure in accordance with 5.(10)(1) of the Procedure.

(11) Definition of confidential business information

The confidential business information described in 5.(10)(3) of the Procedure is defined as manufacturing methods, sales methods and other technical or sales information used in business that are managed as confidential and are not publicly known.

5. Review Results and Proposal

The report and proposal document disclosure method described in 6.(1) and 6.(2) of the Procedure shall be designated separately by the Board.