

# Government Procurement Challenge System

Office for Government Procurement  
Challenge System  
Cabinet Office, Government of Japan



# 1. Overview of Government Procurement Challenge System

## (1) Role

The system's role is to provide greater government procurement procedure transparency, fairness and competition under the principle of non-discrimination of domestic and foreign interests by taking and handling specific complaints regarding government procurement of goods, construction services and other services.

## (2) Background

The new World Trade Organization (WTO) Agreement on Government Procurement was negotiated in parallel with the Uruguay Round and went into force on January 1, 1996. In conjunction with this, Japan's Cabinet passed a decision on December 1, 1995 to establish a government procurement challenge system. Complaint handling was begun on January 1, 1996. (See [Reference 1](#).)

## (3) Composition

### i Council of Government Procurement Review

Headed by the Cabinet Vice-Minister, this council is composed of vice-ministers and other officials from related ministries. It formulates complaint-handling procedures.

### ii Government Procurement Review Board

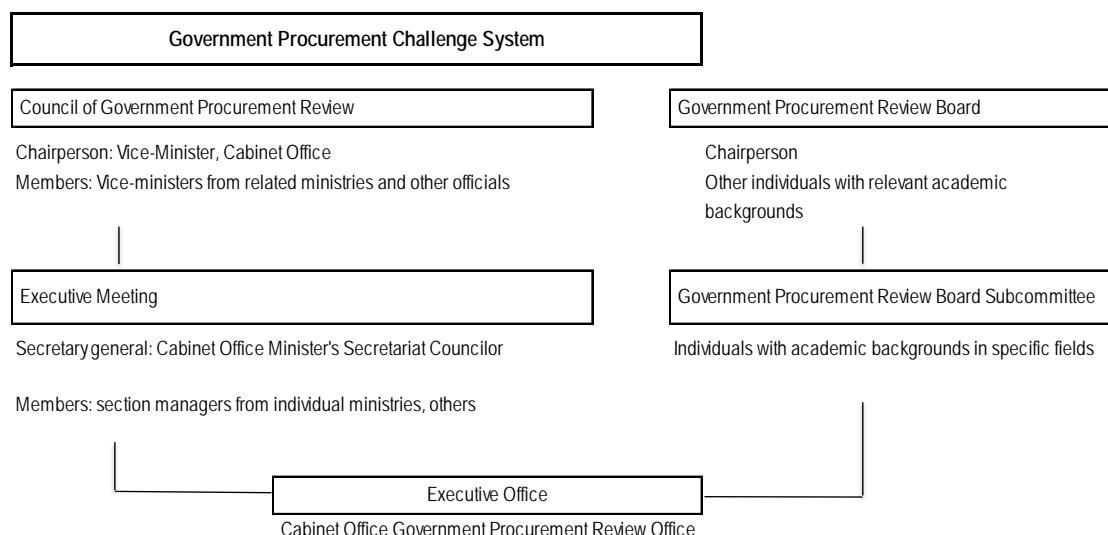
This board is composed of members with academic backgrounds in government procurement. It reviews complaints regarding procurement by central government entities and other government-affiliated entities based on procedures defined by the Council of Government Procurement Review from a position of impartiality and independence, according to the details of procurement to the relevant procedures defined in the Agreement on Government Procurement (including the revised Agreement on Government Procurement of April 2014, hereafter referred to as the "Government Procurement Agreement") and international agreements and regulations (See [Reference 2](#) and [Reference 3](#)) separately designated by the Chairperson of the Council of Government Procurement Review.

## < References >

- (1) Details about the Agreement on Government Procurement: [https://www.wto.org/english/tratop\\_e/gproc\\_e/gp\\_gpa\\_e.htm](https://www.wto.org/english/tratop_e/gproc_e/gp_gpa_e.htm)
- (2) The texts of the revised Agreement on Government Procurement: [https://www.wto.org/english/docs\\_e/legal\\_e/rev-gpr-94\\_01\\_e.htm](https://www.wto.org/english/docs_e/legal_e/rev-gpr-94_01_e.htm)

## (4) Executive Office

The Executive Office is part of the Cabinet's Government Procurement Review Office.



## 2. Filing Complaints

### (1) Scope of Government Procurement Complaints

#### (1) Complaints involved

Suppliers may file complaints specific instances of individual government procurement that violate the Government Procurement Agreement and/or international agreements and measures that apply to government procurement. Filed complaints are reviewed in line with government procurement complaint review procedures (hereafter referred to as "review procedures"; see [Reference 4](#)) and detailed regulations on government procurement-related complaint review procedure (hereafter referred to as "detailed regulations"; see [Reference 5](#)).

#### (2) Organizations involved

This system reviews complaints regarding procurement by central governmental organizations, incorporated administrative agencies and other bodies. See Government Procurement Agreement Appendix I Appendix Tables 1 and 3 (shown below) for details.

The Government Procurement Agreement also requires local governmental organizations (in individual prefectures and government-ordinance-designated cities) to establish review organizations (Government Procurement Agreement Appendix I Appendix Table 2 (shown below)), and Japan has established separate review organizations in individual prefectures and government-ordinance-designated cities. See below for contact points.

#### (3) Base government procurement amounts involved

Complaints may be filed regarding government procurement by the central government, incorporated administrative agencies and other bodies for general goods and/or services valued at 100,000 SDR (16 million) or more, construction services, engineering services and other technical services covered by the Agreement valued at 450,000 SDR (74 million) or more, and construction services valued at 4,500,000 SDR (740 million) or more.

\* Japanese yen conversion equivalents for the period April 1, 2016 to March 31, 2018.

< References >

(1) Government Procurement Agreement Appendix I Appendix Tables 1:

<https://e-gpa.wto.org/en/Annex/Details?Agreement=GPA113&Party=Japan&AnnexNo=1&ContentCulture=en>

(2) Government Procurement Agreement Appendix I Appendix Tables 2:

<https://e-gpa.wto.org/en/Annex/Details?Agreement=GPA113&Party=Japan&AnnexNo=2&ContentCulture=en>

(3) Government Procurement Agreement Appendix I Appendix Tables 3:

<https://e-gpa.wto.org/en/Annex/Details?Agreement=GPA113&Party=Japan&AnnexNo=3&ContentCulture=en>

(4) Details about the threshold values :<https://e-gpa.wto.org/en/ThresholdNotification/FrontPage>

(5) Details about the type of services covered by the Agreement:

- <https://e-gpa.wto.org/en/Annex/Details?Agreement=GPA113&Party=Japan&AnnexNo=5&ContentCulture=en&AdvancedSearch=False>
- <https://e-gpa.wto.org/en/Annex/Details?Agreement=GPA113&Party=Japan&AnnexNo=6&ContentCulture=en&AdvancedSearch=False>

< Contact Points >

(1) Central governmental organizations, incorporated administrative agencies and other bodies:<https://japan.kantei.go.jp/procurement/2014/ch/6FY2014attach3.pdf>

(2) Sub-central government entities: <https://www5.cao.go.jp/access/english/local-e.html>

### (2) Consultations with procuring entities

If a supplier believes that the Government Procurement Agreement, and/or international agreements and

measures have been violated, the review procedures recommend that the supplier first engage in consultations with the procuring entity and seek to resolve the problem (review procedure 2.(2)).

If a supplier believes that the Government Procurement Agreement, and/or international agreements and measures have been violated and requests to engage in consultations with the procuring entity, the procuring entity must promptly comply and work to resolve the complaint (review procedure 2.(3)).

### (3) Complaint Review Procedure

#### (1) Complainants

Complaints may be filed within 10 days from the time when the basis of the complaint became known or reasonably should have become known during any stage of procurement (review procedure 5.(1)). However, this does not apply to the period of consultations with the procuring entity (detailed regulations 1(3)).

For government procurement for initiatives other than public projects, complaints may be filed by parties providing or capable of having provided the goods and/or services procured by the procuring entity (these parties are defined as suppliers). In regard to government procurement for public projects, see review procedure 2.(1).

#### (2) Where complaints are filed

Complaints may be filed with the Government Procurement Review Board (whose executive office is within the Cabinet Government Procurement Review Office).

#### (3) How complaints are filed

Complaints may be filed in writing using the attached sample form (see Attached Sample Form 1).

### (4) Participation in the Complaint Review Process

When complaints are accepted for review, all suppliers with interests in the relevant procurement may participate in the complaint review process. Anyone wishing to participate must submit a document to the Government Procurement Review Board (whose executive office is within the Cabinet Government Procurement Review Office) indicating their desire to do so (Attached Sample Form 2) within five days of the public announcement via the Official Gazette, the Internet or other channels to the effect that the complaint has been received by the Government Procurement Review Board. For details, see review procedure 4.

### (5) Review Results and Proposals by the Government Procurement Review Board

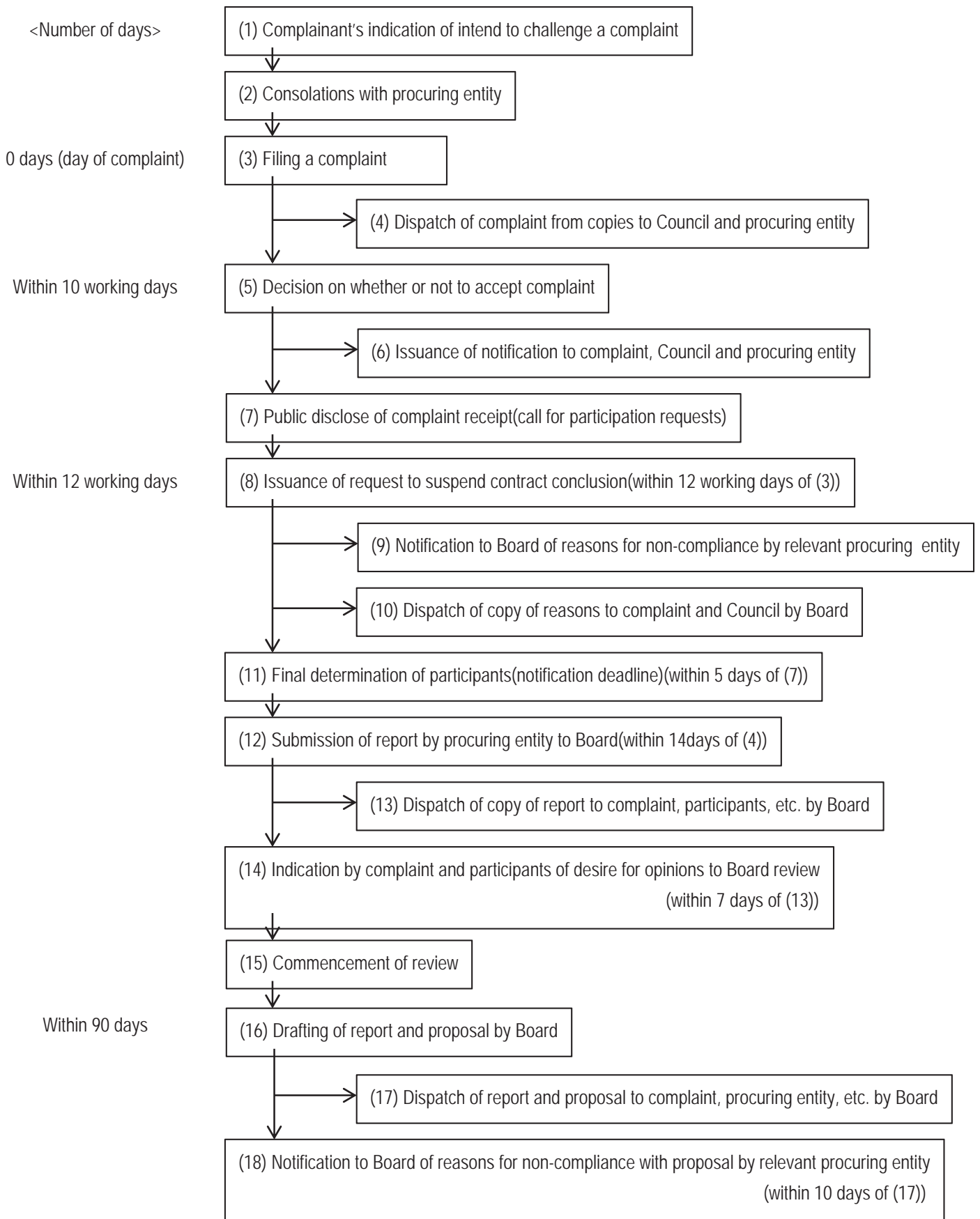
The Government Procurement Review Board creates a report detailing the results of its review. This will generally be created within 90 days of the complaint being received. If measures defined in the Government Procurement Agreement, and/or international agreements and measures are recognized as not having been implemented, a proposal document will be drafted together with the report. As a general rule, all related procuring entities are to implement the proposals of the Government Procurement Review Board as their own decisions. For details, see review procedure 6.

< Past Review Results and Proposals > [https://www5.cao.go.jp/access/english/chans\\_board\\_e.html](https://www5.cao.go.jp/access/english/chans_board_e.html)

Contact information regarding government procurement review inquiries:

**Government Procurement Review Board Executive Office**  
**(Cabinet Government Procurement Review Office)**  
1-6-1 Nagata-cho, Chiyoda-ku, Tokyo 100-8914  
(1207, 12F, Central Government Building No. 8)  
Tel: 03-5253-2111 Ext: 32184 Fax: 03-3581-4772  
Website: [https://www5.cao.go.jp/access/english/chans\\_main\\_e.html](https://www5.cao.go.jp/access/english/chans_main_e.html)  
(Related regulations, etc. are also listed on the website.)

Complaint Review Process (Conceptual Diagram)



(Note) The figure above gives an overview process. The number of days depends on the type of government procurement involved.

For detail, see "Review procedure".

Establishment of the Council of Government Procurement Review

December 1, 1995 – Cabinet decision  
 December 15, 1998 – Partial revision  
 January 6, 2001 – Partial revision  
 January 9, 2007 – Partial revision  
 December 28, 2007 – Partial revision  
 September 1, 2009 – Partial revision  
 March 13, 2012 – Partial revision  
 March 7, 2014 – Partial revision

In order to promote the processing of complaints on government procurement, the Government of Japan will establish the Office of Government Procurement Review ("the OGPR") under the Cabinet Office, and the Government Procurement Review Board ("the Board") will be held under the OGPR. The Board will commence processing complaints on 1 January 1996, as follows.

1. Council of Government Procurement Review

(1) Task

The Council of Government Procurement Review (hereafter referred to as "the CGPR") will promote the processing of complaints on procurement by the central government entities and other central government-related entities in order to further increase the level of transparency, fairness and competitiveness of Japanese government procurement procedures, as well as implementing complaint handling procedures in accordance with Article 20 of the Agreement on Government Procurement drafted in Marrakesh on April 15, 1994 (hereafter referred to as "the Agreement"), Article 18 of the revised agreement created by the protocol regarding the revision of the Agreement on Government Procurement, drafted in Geneva on March 30, 2012 (hereafter referred to as "the Revised Agreement") and other international agreements designated by the Chairperson.

(2) Composition

The CGPR is composed of the following members. The Chairperson of CGPR may appoint additional members if necessary.

Chairperson	Vice-Minister, Cabinet Office
Members	Councilor, Cabinet Secretariat
	Deputy Director-General of Cabinet Legislation Bureau
	Vice-Minister, Reconstruction Agency
	Vice-Minister of Internal Affairs and Communications
	Vice-Minister of Justice
	Vice-Minister of Foreign Affairs
	Vice-Minister of Finance
	Vice-Minister of Education, Culture, Sports, Science and Technology
	Vice-Minister of Health, Labour and Welfare
	Vice-Minister of Agriculture, Forestry and Fisheries
	Vice-Minister of Economy, Trade and Industry
	Vice-Minister of Land, Infrastructure, Transport and Tourism
	Vice-Minister of the Environment
	Vice-Minister of Defense
	Commissioner-General of-General of the National Police Agency
	Commissioner-General of Financial Services Agency
	Commissioner-General of the Consumer Affairs Agency

(3) Executive Meeting

The Executive Meeting is organized with the Deputy Director General of Cabinet Office as the Head of the meeting and the other government Officials who hold the position designated by the Chairperson of the CGPR. The Head of the Executive Meeting is to attend the meeting of the CGPR.

(4) Other

The Chairperson of CGPR will determine all other matters necessary for its operation..

Decisions and other procedures made in the past by the Office of Government Procurement Review and its Head shall be carried over to the CGPR and its Chairperson.

2. Government Procurement Review Board

(1) Aim

The Government Procurement Review Board (hereafter referred to as "the Board") reviews complaints filed with respect to procurement by the central government entities and other central government-related entities impartially and independently with reference to the procurement procedures set forth by the Agreement, the Revised Agreement and the applicable measures designated by the Chairperson of the as well as in compliance with the complaint review procedures adopted by the CGPR. .

(2) Composition

The Board will consist of members with academic and experience in government procurement. Members will be appointed by the Chairperson of the CGPR.

(3) Other

The Chairperson of CGPR will determine all other matters necessary for operation of the Board.

## Reference 2

### Designation of International Agreements Applying to Government Procurement

March 7, 2014

Chairperson of the Council of Government Procurement Review decision

January 15, 2015 – Revision

December 30, 2018 – Revision

Under the provisions of 1.(1) and 2.(1) of “Establishment of the Council of Government Procurement Review” (Cabinet decision, December 1, 1995), I hereby designate the following international agreement to apply in relation to government procurement in addition to the Agreement on Government Procurement drafted in Marrakesh on April 15, 1994, the revised Agreement on Government Procurement created by the protocol regarding the revision of the Agreement on Government Procurement drafted in Geneva on March 30, 2012.

1. Agreement between Japan and the Republic of Singapore for a New-Age Economic Partnership
2. Agreement between Japan and the United Mexican States for the Strengthening of the Economic Partnership
3. Agreement between Japan and the Republic of Chile for a Strategic Economic Partnership
4. Agreement on Free Trade and Economic Partnership between Japan and the Swiss Confederation
5. Agreement between Japan and the Republic of Peru for an Economic Partnership
6. Agreement between Japan and Australia and for an Economic Partnership
7. Comprehensive and Progressive Agreement for Trans-Pacific Partnership



December 14, 1995

Chairperson of the Council of Government Procurement Review decision

April 1, 1997 – Revision

March 12, 2001 – Revision

January 11, 2008 – Revision

March 7, 2014 – Revision

April 4, 2014 – Revision

Under the provisions of 2.(1) of "Establishment of the Council of Government Procurement Review" (Cabinet decision, December 1, 1995), I hereby designate the following measures to apply in relation to government procurement in addition to the Agreement on Government Procurement drafted in Marrakesh on April 15, 1994, the revised Agreement on Government Procurement created by the protocol regarding the revision of the Agreement on Government Procurement drafted in Geneva on March 30, 2012, and the international agreements designated in Designation of International Agreements Applying to Government Procurement (Chairperson of the Council of Government Procurement Review decision, March 7, 2014).

1. The Additional Measures of the Government of Japan on Major Projects Arrangements (approved by the Cabinet, on 26 July 1991)
2. Action Plan on Reform of Bidding and Contract Procedure for Public Works (approved by the Cabinet, on 18 January 1994)
3. Operational Guidelines with respect to the Action Plan on Reform of Bidding and Contract Procedure for Public Works (approved by the Vice Ministers' Conference on Cabinet, on 17 June 1996)
4. Operational Guideline on Procedures for Government Procurement etc. (understanding among related ministers and agencies concerned in procurement)

(Note) As far as article 15. above is concerned, the complaint may be filed concerning the procurement valued over thresholds or mentioned in the article 4. and 7. in the "Operational Guidelines with Respect to the Action Plan on Reform of Bidding and Contract Procedures for Public Works." If the procurement is subject to the procedures in the article 4. and 7. in this Operational Guideline, the procurement is regarded as the case of the "Public Invitation Proposal Procedures" or "Public Invitation Competitive Bidding Procedures" when the article 2.(1)iii. in the "Review Procedures for Complaints Concerning Government Procurement" (Decision by the CGPR, on 14 December 1995) is applied.

## Reference 4

### Review Procedure for Complaints Concerning Government Procurement

December 14, 1995  
Council of Government Procurement Review decision  
January 11, 1999 – Revision  
January 11, 2008 – Revision  
March 7, 2014 – Revision  
April 4, 2014 – Revision

Under "Establishment of the Council of Government Procurement Review" (Cabinet decision, December 1, 1995), we adopt the Review Procedures for complaints Concerning Government Procurement as follow..

#### 1. Government Procurement Review Board

- (1) The Government Procurement Review Board (hereafter referred to as "the Board") receives a complaint in written form, investigates the facts of the situation (including every aspect of the procurement by the procuring entity identified in the complaint), and issues proposals to the procuring entity.
- (2) Exclusion and Avoidance
  - i. Board members who are recognized as having interests in the complaint may not participate in its review.
  - ii. Board members who recognize themselves as having interests in the complaint may avoid participation in its review with the permission of the Chairperson of the Board.
- (3) The Board may establish subcommittees for specific product or service if necessary.
- (4) The Chairperson of the Board appoints those who chair the subcommittees.

#### 2. Filing of Complaints

- (1) For the purposes of this review procedure, the term "supplier" referred to in the Procedures is defined as follows:
  - i. Government procurement other than for public projects:  
Agents that supplied or were capable of supplying the product or service when the procuring entity procured the same
  - ii. Government procurement for public projects:
    - a. For complaints concerning the registration of eligible agents, an agent that performed the registration
    - b. For complaints concerning open competitive bidding, any of the following:
      - (i) For complaints concerning confirmation of eligibility to participate in competitive bidding, an agent that petitioned for confirmation of eligibility to participate in competitive bidding
      - (ii) For complaints concerning procurement procedures other than those indicated in a. and b.(i), an agent that was confirmed as eligible to participate in competitive bidding
      - (iii) For complaints concerning bidding results, an agent that placed a bid
    - c. For complaints concerning procedures other than (B), an agent that has been registered as eligible for the procurement contract in question (or for limited-tender contracts, an agent with an interest in said contract)
  - iii. Design/consulting operation government procurement for public projects:
    - a. For complaints concerning the registration of eligible agents, an agent that performed the registration
    - b. For complaints concerning publicly solicited proposals or publicly solicited competitive bidding, any of the following:
      - (i) For complaints concerning the selection of agents eligible to issue a proposal (for publicly solicited proposals) or the selection of agents eligible to engage in competitive bidding (for publicly solicited competitive bidding), an agent that has expressed interest in the procurement
      - (ii) For complaints concerning procurement procedures other than those indicated in (A) and (B)(i), an agent that was eligible to submit a proposal (for publicly solicited proposals) or an agent that was eligible to participate in competitive bidding (for publicly solicited competitive bidding)
      - (iii) For complaints concerning the selection of proposals (for publicly solicited proposals), an agent that has submitted a proposal. For complaints concerning bidding results (for publicly solicited competitive bidding), an agent that has submitted a bid
    - c. For complaints concerning procedures other than (B), an agent that has been registered as eligible for the procurement contract in question (for limited-tender contracts, an agent with an interest in said contract)
- (2) Any supplier deeming that procurement has been performed in violation of the Agreement on Government Procurement drafted in Marrakesh on April 15, 1994, the revised Agreement on Government Procurement created by the protocol regarding the revision of the Agreement on Government Procurement drafted in Geneva on March 30, 2012 and/or international agreements and regulations designated by the Chairperson (hereafter referred to as Government Procurement Agreements, etc. may file a complaint with the Board. If a supplier believes that the Government Procurement Agreements, etc. have been violated, it is recommended that the supplier first engage in consultations with the procuring entity and seek to resolve the problem.

- (3) If a supplier believes the Government Procurement Agreement, etc. have been violated and requests to engage in consultations with the procuring entity, the procuring entity must promptly comply and work to resolve the complaint.

### 3. Calculation of time in the Procedure

For the purposes of this review procedure:

- (1) Calendar days are to be used when numbers of days are calculated unless otherwise specified.
- (2) Work days are defined as those that are not holidays for Japanese governmental organizations.
- (3) The first day is not included when periods are determined.
- (4) When the last day of a period falls on a holiday for Japanese governmental organizations, the period shall be considered to end on the following day.

### 4. Participants

- (1) All suppliers with an interest in the procurement that generated the complaint may participate in the complaint review procedure.
- (2) The organization that engaged in the procurement that generated the complaint (hereafter referred to as the "related procuring entity") must participate in the complaint review procedure.
- (3) Suppliers with an interest in the procurement that generated the complaint who wish to participate in the complaint review procedure must notify the Board of their wish to do so within five days of the public disclosure defined in 5.(5). The review procedure is open to suppliers who do so (hereafter referred to as "participants").
- (4) Notifications submitted by participants as specified in (3) may be rescinded at any time.

### 5. Complaint Review Procedure

- (1) A supplier judging that procurement has been made in violation of the regulations of any Government Procurement Agreement, etc. at any stage of the procurement process may register a complaint with the Board within 10 days of discovering or being reasonably capable of having discovered the conditions prompting the complaint. The Board immediately sends a copy of the complaint to the Council and the related procuring entity.
- (2) If the Board finds problems in the documentation used to file the complaint, it may ask the complainant to make the necessary correction. The Board may correct minor problems with documentation at its own discretion.
- (3) In general, the Board completes the review within 10 working days of the complaint being filed. However, complaints may be rejected in writing with the reason indicated if they:
  - i. are made late;
  - ii. do not relate to the Government Procurement Agreement or related, etc.;
  - iii. are minor or insignificant;
  - iv. are not filed by a supplier; or
  - v. are otherwise unsuitable for review by the Board.
- (4) A related procuring entity that believes a complaint should be rejected may inform the Board of such in writing together with the reasons therefor.
- (5) The Board may accept late complaints if it deems that reasonable cause is shown.
- (6) Once the Board recognizes a complaint as valid and accepts it, it immediately notifies the party filing the complaint (hereafter referred to as the "complainant"), the Council and the related procuring entity in writing, as well as issuing a public announcement via a channel or channels decided by the Chairperson.
- (7) Suspension of contract conclusion and enforcement
  - i. In regard to complaints filed before a contract has been concluded, the Board shall generally issue a written request to the related procuring entity within 12 working days of complaint receipt stipulating that the organization should not conclude contracts during the review period.
  - ii. In regard to complaints filed within 10 days of the conclusion of a contract, the Board shall generally issue a written request to the related procuring entity in a timely manner stipulating that the organization should suspend the enforcement of the contract during the review period.
  - iii. If the Board decides, due to unavoidable emergency circumstances, not to send a request to the related procuring entity stipulating that it not conclude a contract or that it suspend the execution of a contract, the Board shall notify the complainant and the Council of such immediately in writing outlining the basis of the decision.
  - iv. Related procuring entity/procuring entities shall promptly comply with any requests from the Board not to conclude a contract or to suspend the execution of a contract.
  - v. In the event of iv. above, if the head of the related procuring entity determines that procuring entity cannot comply with the Board's request due to unavoidable circumstances, the Board must be immediately notified of such with an explanation of the reasons therefor. The Board shall immediately send a copy of this notification to the complainant and the Council.
  - vi. When a notification is issued as in v. above, the Board must evaluate whether the reason given is sufficient to justify the decision and immediately notify the complainant, the Council and the related procuring entity in writing of its decision.
- (8) Review
  - i. The Board shall ask explanations, statements of position, provision of documentation and other evidence of the complainant and the related procuring entity, and shall review the complaint accordingly.

- ii. The related procuring entity may not refuse explanations, statements of position, provision of documentation and other evidence unless doing so would damage the public interest or seriously impede the performance of its public duties.
  - iii. The Board may demand that the related procuring entity provide explanations, statements of position, documentation and other evidence if the Board determines that such resources are necessary to determine whether their release would damage the public interest or seriously impede the performance of the related procuring entity's public duties. When explanations, statements of position, documents and other evidence are requested for this purpose, no other parties may request their disclosure.
  - iv. The Board shall use these defined procedures to review the complaint regardless of the status of any lawsuit filed with the courts regarding the procurement that generated the complaint.
  - v. Before the Board decides on the results of the review, the complainant, participants, and/or the related procuring entity may ask to meet with the Board to present their views.
  - vi. The complainant, participants and the related procuring entity may be represented by a lawyer or another party authorized by the Board.
  - vii. The authorization in (6) above may be rescinded at any time.
  - viii. The authority of the representative must be certified in writing.
  - ix. If there are two or more representatives, each one may represent the relevant party.
  - x. The complainant, participants, the related procuring entity and the representative may attend together with an assistant with the authorization of the Board.
  - xi. The authorization in (10) above may be rescinded at any time.
  - xii. The complainant, participants and the related procuring entity may each hear statements made at Board meetings held in regard to the complaint unless the Board deems it inappropriate.
  - xiii. The Board may call witnesses at its own discretion.
  - xiv. The complainant, participants and the related procuring entity may ask that the opinions and reports they present to the Board be released publicly, and may request the attendance of witnesses. The Board should in principle comply with such requests. However, decisions on the public release of opinions/reports and the attendance of witnesses must be made in consideration of protection for the trade secrets, confidential information regarding manufacturing processes, intellectual property and other confidential business information of the complainant, participants, the related procuring entity and other parties involved in the procurement that generated the complaint.
  - xv. The Board may hold public hearings regarding the complaint if requested to do so by the complainant or the related procuring entity, or of the Board's own accord.
  - xvi. The Board may, if necessary, ask the opinions of technical specialists and other authorities on the procurement in question. Technical specialists and other authorities may be agents with a practical interest in the relevant procurement.
- (9) The complaint filed as detailed in (1) may be withdrawn at any time.
- (10) Related procuring entity report
- i. Once a complaint is accepted by the Board, the related procuring entity must submit to the Board a report on the procurement that generated the complaint, including the following items, within 14 days of the related procuring entity's receipt of a copy of the complaint:
    - (A) Specification documents, bidding documents containing specifications, and other documentation related to the procurement that generated the complaint
    - (B) A written explanation that states related facts, clearly outlines identified truths and actions/proposals of the related procuring entity, and addresses all complaint items
    - (C) Additional items and information necessary for complaint resolution
      - ii. After receiving the report designated in (1) above, the Board shall immediately send a copy to the complainant, participants and the Council. It shall also provide the complainant and participants with the opportunity to submit a request within seven days of receiving this copy for the Board's consideration or complaint review based on the report. Upon receiving such opinions and requests, the Board shall immediately send a copy of them to the related procuring entity.
      - iii. Without the consent of parties with an interest in the procurement that generated the complaint, the Board shall not disclose to third parties any trade secrets, confidential information regarding manufacturing processes, intellectual property or other confidential business information provided by suppliers.

## 6. Review Results and Proposals

- (1) The Board shall create a written report containing the results of its review within 90 days after the complaint is filed (or 50 days for complaints regarding public projects). The report shall include an explanation of the basis of the Board's conclusions, clearly indicate whether the complaint is recognized in whole or in part, and specify whether the procurement procedure involved any infractions of the Government Procurement Agreement, etc.
- (2) If the Board concludes that measures defined in the Government Procurement Agreement, etc. have not been implemented, it shall create a written proposal together with the report to outline appropriate corrective measures, including either items 1 or 2 through 5 below.
  - i. Implementation of the procurement process again from the start.
  - ii. Reperformance of procurement without modification of the procurement conditions.
  - iii. Re-examination of the procurement.
  - iv. Choice of a different supplier as the contract signatory.
  - v. Cancellation of the contract.
- (3) In the creation of the review result report and the proposal, the Board shall take into consideration the conditions of the procurement, including the degree of procurement procedure error, the amount of adverse impact on all or certain suppliers, the

- degree to which the purposes of the Government Procurement Agreement, etc. were impeded, the good faith of the complainant and the related procuring entity, the extent of the procurement contract's execution, the impact the proposal is expected to have on the government, the urgency of the procurement, and the impact of the proposal on the operations of the related procuring entity.
- (4) If a Board member calls for the announcement of a minority opinion, the Board may include this opinion in the report.
  - (5) The Board shall send the report and the proposal to the complainant, the related procuring entity, participants and the Council.
  - (6) As a general rule, the related procuring entity shall implement the proposals issued by the Board in response to formally filed complaints as their own decisions. If the related procuring entity determines that it is unable to comply with the Board's proposals, it must notify the Board of such and of the reasons why within 10 days of receiving the proposal (or 60 days for complaints regarding public projects). Upon receiving this report, the Board shall immediately send a copy to the Council.
  - (7) The Board shall respond to external inquiries regarding review results and proposals.
  - (8) In the event that the Board, during its review of a complaint, discovers evidence of illegal impropriety or actions in the procurement that generated the complaint, it shall report the matter to the relevant enforcement authorities so that appropriate measures can be taken.

## 7. Expedited Processing

- (1) If the Board receives a written request from the complainant or the related procuring entity for expedited processing of the complaint, the Board shall use the expedited processing procedure defined in this section to determine whether or not to review the complaint.
- (2) If the Board receives a request for expedited processing, it shall immediately decide whether or not to perform such processing and notify the complainant, the related procuring entity, participants and the Council of its decision.
- (3) The deadlines and procedures for expedited processing are as indicated below.
  - i. The related procuring entity must provide the Board with the report described in 5.(10) within six working days of receiving notification from the Board that expedited processing will be performed. Upon receiving the report, the Board shall immediately send a copy to the complainant and participants, and shall provide them with an opportunity to submit a request within five days of receiving this copy for expression of the Board's opinion or determination of facts based on the document. Upon receiving the request, the Board shall immediately send a copy to the related procuring entity.
  - ii. Within 45 days after the complaint is filed (or 25 days for complaints regarding public projects, telecommunications equipment or medical technology products and services related to such equipment and products), the Board shall create a report containing the results of its review and a proposal.

## 8. Public Disclosure of Complaint Receipt and Review Status

The Executive Meeting, as required separately by the Chairperson, shall summarize the situation of the government procurement complaint receipt and related processing conditions, and shall publicly disclose overviews of said conditions on a regular basis.

## 9. Retention of Procurement-Related Documents

In order to contribute to complaint review procedures, procuring entity procuring entities engaged in procurement covered by the Government Procurement Agreement, etc. must retain documents related to said procurement (including data that can be used to appropriately confirm the history of procurement based on electronic methods) for a period of three years from the contract date of said procurement (or five years for public projects, telecommunications equipment or medical technology products and services related to such equipment and products).

## 10. Application

- (1) This review procedure shall be applied to complaints filed on or after January 1, 1996.
- (2) In the event that this review procedure overlaps with the complaint review procedures based on Attachments 2, 3 or 4 of the Operational Guidance on Procedures for Government Procurement etc. (March 31, 2014 agreement between related ministries), this review procedure shall be given priority.

## Reference 5

### 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 Table 3 of the Agreement on Government Procurement drafted in Marrakesh on April 15, 1994 or Annex I Appendix Table 3 of the revised Agreement on Government Procurement created under the protocol regarding the revision of the Agreement on Government Procurement drafted in 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.



Attached Sample Form 1

/ /

Government Procurement Complaint Form (Sample)

Attn: Government Procurement Review Board

Complainant\*<sup>1)</sup>      Seal      Address  
Tel.      Fax

Address  
Representative\*<sup>2)</sup>      Seal  
Tel.      Fax

In accordance with 5.(1) of the Government Procurement-Related Complaint Review Procedure, I hereby file the following complaint:

1. Government procurement forming the subject of the complaint\*<sup>3)</sup>

Bid notice no.      (official gazette date      /      /      )

Procuring entity  
Procured article/service

2. Date of discovery of facts leading to the complaint\*<sup>4)</sup>

3. Details of complaint\*<sup>5)</sup>

4. Reason for complaint\*<sup>6)</sup>

5. Conduct and content of consultations with the procuring entity involved in the complaint\*<sup>7)</sup>

Consultations conducted  
Content of consultations

Consultations not conducted

6. Request for anonymity in the public announcement and disclosure of the complaint\*<sup>8)</sup>

Anonymity requested  
Anonymity not requested

\*1: If the complainant is a corporation, enter its main office address, its name and the name of the corporation's representative for the name and address given. Anonymous corporate complaints will not be accepted.

\*2: If the appointed representative is a lawyer, a Representative (Lawyer) Appointment Notice (Attached Sample Form 3) must be submitted. For other representatives, a Representative Appointment Approval Request (Attached Sample Form 4) must be submitted.

\*3: For procurement that has not been publicly announced in an official gazette, enter the name of the procuring entity and the details



of the procured articles and services with as much detail as possible.

- \*4: 2.(2) of the Government Procurement-Related Complaint Review Procedure states: "A supplier judging that procurement has been performed in violation of the Agreement on Government Procurement drafted in Marrakesh on April 15, 1994, the revised Agreement on Government Procurement created under the protocol regarding the revision of the Agreement on Government Procurement drafted in Geneva on March 30, 2012, and/or international agreements and regulations designated by the Chairperson (hereafter referred to as the Government Procurement Agreement, etc.) may file a complaint with the Government Procurement Review Board (hereafter referred to as "the Board")." 5.(1) of the Procedure states: "A supplier judging that procurement has been performed in violation of the regulations of any Government Procurement Agreement, etc. at any stage of the procurement process may register a complaint with the Board within 10 days of discovering or being reasonably capable of having discovered the conditions prompting the complaint."
- \*5: Include the decision desired from the Board.
- \*6: Include detailed reasons for the complaint regarding the violation of the Government Procurement Agreement, etc., and enter or attach any important information or evidence to support the complaint.
- \*7: 2.(2) of the Government Procurement-Related Complaint Review Procedure states: "A supplier judging that the Government Procurement Agreement, etc. have been violated is advised to first engage in consultations with the procuring entity and seek to reach a resolution."
- \*8: In line with the regulations stated in Method of Public Disclosure on the Status of Receipt and Review of Complaints Regarding Government Procurement (Chairperson of the Council of Government Procurement Review decision, July 30, 1996), the details of the complaint receipt and review status shall be summarized on a quarterly basis, and the names and other information of complainants shall be publicly disclosed. Complainants may be anonymized for the purpose of such disclosure.  
In line with the regulations stated in Method of Public Disclosure Regarding Receipt of Complaints (Chairperson of the Government Procurement Review Board decision, December 26, 1995), the names and other information of complainants shall be listed in official gazettes and elsewhere. The names of complainants may be anonymized for the purpose of such disclosure.
- \*9: See 2.(1) of Government Procurement-Related Complaint Review Procedure and 1.(1) of the Detailed Regulation on Government Procurement-Related Complaint Review Procedure for details of which suppliers may file complaints.
- \*10: The executive office assigns a unique number to each complaint received. If the number (Review Board Item No. O) is not recognized, please check with the executive office.

Attached Sample Form 2

Procurement Review Procedure Participation Request (Sample)

/ /

Attn: Government Procurement Review Board

Requesting party* <sup>1)</sup>	Address	T
	Name* <sup>2)</sup>	Seal
	Tel./fax no.	
Representative* <sup>3)</sup>	Address	T
	Name	Seal
	Tel./fax no.	
Complaint procedure		Complaint no.      Review Board item no.
Purpose of participation		
Reason for participation		

\*1: See 4.(1) of Government Procurement-Related Complaint Review Procedure for details of who may participate in complaint review procedures.

\*2: If the requesting party is a corporation, enter its main office address, its name and the name of the corporation's representative for the name and address given. Anonymous corporate complaints will not be accepted.

\*3: If the appointed representative is a lawyer, a Representative (Lawyer) Appointment Notice (Attached Sample Form 3) must be submitted. For other representatives, a Representative Appointment Approval Request (Attached Sample Form 4) must be submitted.

Attached Sample Form 3

Representative (Lawyer) Appointment Notice (Sample)

/ /

Attn: Government Procurement Review Board

Name and address

Seal

In accordance with 4.(6)(1) of the Detailed Regulations on Government Procurement-Related Complaint Review Procedure, this document certifies that the following individual has been appointed as a representative:

Address			
Name			
Bar association			
Law office	Name		
	Address		
	Tel.	Fax	
Complaint no. and delegated items			

\* If the representative is a corporation, enter its main office address, its name and the name of the corporation's representative for the name and address given.

Attached Sample Form 4

Representative Appointment Approval Request (Sample)

/ /

Attn: Government Procurement Review Board

Name and address

Seal

In accordance with 4.(6)(2) and 4.(6)(3) of the Detailed Regulations on Government Procurement-Related Complaint Review Procedure, this document is submitted to request that the following person be approved as a representative:

Address		
Name		
Occupation (Relationship to party involved in complaint)		
Contact information	Address	
	Tel.	Fax
Reason(s) for choice of individual as a representative		
Complaint no. and delegated items		

\*If the representative is a corporation, enter its main office address, its name and the name of the corporation's representative for the name and address given.

Attached Sample Form 5

Assistant Attendance Approval Request (Sample)

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Attn: Government Procurement Review Board

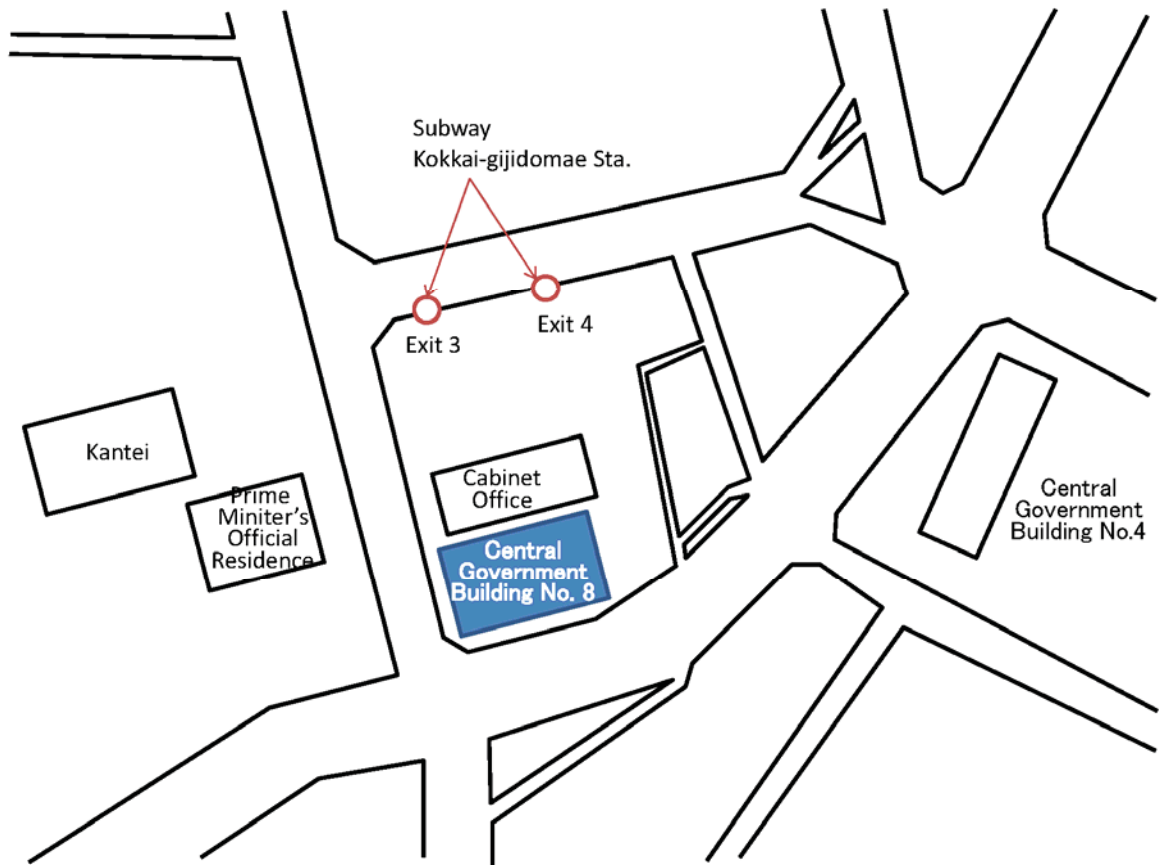
Applicant's name and address

Seal

In accordance with 4.(7) of Government Procurement-Related Complaint Review Procedure Bylaws, this document is submitted to request that the following person be approved to attend as an assistant:

Address	
Name	
Occupation	
Complaint no.	
Relationship to party involved in complaint	
Reason(s) for requiring assistant's attendance	

(Note) If the applicant is a corporation, enter its main office address, its name and the name of the corporation's representative for the name and address given.



Secretariat for Government Procurement Review Board

(Office for Cabinet Government Procurement Review)

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(1207, 12F, Central Government Building No. 8)

Tel.: 03-5253-2111 (ext. 32184) Fax: 03-3581-4772