

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
January 29, 2021 –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 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 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.