Public Procurement World - Taiwan

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# 1. The Laws

## a. What is the applicable legislation?

In Taiwan, the applicable law regarding public procurement is the Government Procurement Law (GPL).

In addition, the World Trade Organization Government Procurement Committee adopted Taiwan's accession to the Agreement on Government Procurement (GPA) on 9 December 2008. After the internal process of administration and legislation, the GPA began to apply to Taiwan's public procurement on 15 July 2009. As such, both the GPL and the GPA apply to public procurement in Taiwan but the GPL is the main applicable law.

## b. Does the legislation relate to or interact with any applicable trade agreement, such as the European Union procurement rules, WTO Government Procurement Agreement (GPA) or the procurement requirements of the North American Free Trade Agreement (“NAFTA”)?

The GPL was first drafted and promulgated in 1998 in reference to the GPA, which is a multilateral agreement regarding the public procurement market and can be regarded as a trade agreement among members.

## c. What are the basic underlying principles of the legal framework?

According to Article 6 of the GPL, an entity should observe the principles of protecting public interests, fairness and reasonableness, and must not accord differential treatment to suppliers without due cause when conducting any procurement.

In addition, the preamble of the GPA provides that it is desirable to provide transparency of laws, regulations, procedures and practices regarding government procurement.

## d. Is aerospace and defense procurement treated differently from other types of procurement?

No, aerospace procurement is not treated differently from other types of procurement under Article 104 of the GPL.

According to Article 104 of the GPL, procurement conducted by military entities shall generally follow the provisions of the GPL with certain exceptions due to the nature of the procurement. Article 104 of the GPL also provides that if the procurement is for weapons, ammunition, war supplies, or is related to national security or national defense and one of the following circumstances exists, the GPL does not apply:

where the nation is confronted with a war, in mobilization for a war, or in a war

where the procurement is confidential or a strictly confidential (Articles 27, 45 and 61 of the GPL may not apply)

where there is an emergency which may jeopardize an important military mission (Articles 26, 28, and 36 of the GPL may not apply)

where there is only one supplier invited to tender (the first sentence of paragraph 3 of Articles 26 of the GPL may not apply)

# 2. Application of the Statutory Procurement Laws

## a. Which public agencies are covered by the laws?

According to Article 3 of the GPL, public procurement conducted by any government agency, public school or government-owned enterprise (entity) will be governed by the GPL. For instance, CPC Taiwan Corporation, the largest state-owned petroleum company in Taiwan, is subject to the GPL.

## b. Which private entities are covered by the laws?

According to Article 4 of the GPL, a juridical person or organization which takes a grant of more than NTD 1 million from an entity should conduct procurement in accordance with the GPL provided that the amount of the grant is not less than half of the procurement value and also reaches the threshold for publication. For instance, in the case that a government agency delegates a private company to hold a public event and the cost afforded by the agency reaches 1 million as well as half of the total cost, the GPL will apply.

## c. Are co-operations between contracting authorities exempted from public procurement law? If so, what are the conditions for the exemption?

A co-operation between public bodies will be exempted from GPL in the following conditions:

when a government agency delegates its power to the subordinate authorities

when a government agency requires another authority to assist with conducting certain work and reimburse or share the cost later on

other types of co-operations prescribed by laws

## d. Which types of contracts are covered?

According to Article 7 of the GPL, the public procurement includes construction work, property and services. As such, the contracts for the construction work, property and services are covered in the GPL.

## e. How are changes to an existing contract dealt with? Do changes require a new procurement procedure?

The GPL does not specifically provide for changes to an existing government contract. In practice, a government procurement contract usually stipulates the relevant requirements in which changes to the contract should be made in accordance with. Changes do not necessarily require a new procurement procedure.

## f. What is the applicable regime for framework agreements?

The GPL does not have provisions that specifically refer to a "framework agreement." However, under Article 39 of the GPL, when conducting procurement, an entity may entrust a supplier with the project management related to planning, design, supply, or contract performance. This type of provision may be similar to a framework agreement.

## g. What is the applicable regime for public-private partnerships (PPPs)?

PPP Projects associated with infrastructure fall under the realm of the "Act for Promotion of Private Participation in Infrastructure Projects" (Promotion Act), promulgated in 2000. Specifically, the following 7 types of PPP models are subject to the Promotion Act instead of the GPL:

the private institution invests in the construction and operation of new infrastructure, and following the expiration of the operation period, transfers the ownership of the infrastructure to the government.

the private institution invests in the construction of the infrastructure and following the completion of the construction, relinquishes the ownership to the government without compensation. The government then lets the private institution operate the infrastructure. Following the expiration of the operation period, the right to operate reverts to the government.

the private institution invests in the construction of the infrastructure. Following the completion of the construction, the government acquires the ownership by paying the construction expenses in a lump sum or in installments. The government then lets the private institution operate the infrastructure. Following the expiration of the operation period, the right to operate reverts to the government.

the private institution invests in the extension, reconstruction and/or repair of existing infrastructure, and operates the infrastructure. Following the expiration of the operation period, the right to operate reverts to the government.

the private institution operates infrastructure built with investment from the government. Following the expiration of the operation period, the right to operate reverts to the government.

to support the national policy, the private institution invests in the construction of infrastructure on private land provided by the private institution itself, has the ownership thereof following the completion of the construction, and then operates the infrastructure itself or commissions a third party to operate it.

any other method approved by the competent authority.

## h. How are concessions dealt with?

For procurements conducted in accordance with the GPL, no concession of rights will be granted from the procuring entities. Instead of the GPL, PPP models in which concession of certain rights is a vital part fall under the realm of the Promotion Act. As a result, the general procurement provisions will not apply. Pursuant to Article 44 of the Promotion Act, the authority in charge shall organize a Selection Committee which shall establish the evaluation criteria based on the purpose of the infrastructure project concerned, examine and evaluate the materials submitted by the applicants on a fair basis and then select the best applicant therefrom within the evaluation period.

## i. Are there anti-avoidance rules (including laws on bid rigging)?

Yes, Articles 87 and 88 of the GPL set forth the anti-avoidance rules. Under Article 87 of the GPL, the following are crimes:

a person commits violence or threat, administers drugs, or applies hypnosis with the intent to cause a supplier not to tender or to tender contrary to its real intention, or cause the winning tenderer to forego the award or to assign or subcontract after the award.

a person commits fraud or uses any other illegal means to cause the supplier to be unable to tender or cause the opening of tenders to have an incorrect result.

a person causes the supplier not to tender or not to proceed with price competition by means of contract, agreement or other forms of meeting of minds, with the intent to adversely affect the price of the award or to gain illegal benefits.

a person borrows or assumes another's name or certificate to tender, with the intent to adversely affect the result of the procurement or to gain illegal benefits.

Article 88 of the GPL further provides that it is a crime if personnel from a supplier who is entrusted by an entity to conduct planning, design, review, monitoring, project management, or procurement imposes unlawful restrictions or review on the technologies, technical methodology, materials, equipment, or specifications with the intent to gain personal illegal benefits and thereby obtains benefits.

Further, the Fair Trade Law in Taiwan provides regulations, such as Article 24, regarding punishment for anti-competitive conduct.

# 3. Procurement Procedures

## a. What procurement procedures can be followed?

The tendering procedures include open tendering, selective tendering, and limited tendering.

The term "open tendering procedures" means the procedures under which a public notice is given to invite all interested suppliers to submit their tenders.

The term "selective tendering procedures" means the procedures under which a public notice is given to invite all interested suppliers to submit their qualification documents for a pre-qualification evaluation based on specific qualification requirements and, after the evaluation, the qualified suppliers are invited to tender.

The term "limited tendering procedures" means the procedures under which, where no public notice is given, two or more suppliers are invited to compete or only one supplier is invited to tender.

The procuring entity should prepare the tender documentation based on the type of tendering procedures mentioned above. The entity can stipulate the criterion of the bidder and other requirements the entity thinks suitable in the tender documentation. For open tendering or selective tendering procedures, an entity must publish a notice of invitation to tender or of qualification evaluation in the Government Procurement Gazette, and also make it available on the information network.

The bidder should follow the requirements in the tender documentation and prepare the bidder documentation. The tender should be submitted in writing and sealed, by mail or personal delivery, and at the procurement entity or any designated place before the deadline for submitting tenders.

## c. Where are contract notices, i.e. calls for bid, published?

Taiwan-wide calls for bids are published on the website for the Government E-Procurement System:

<http://web.pcc.gov.tw/tps/pss/tender.do?method=goNews>

## c. Can certain prospective bidders be excluded from the competition?

Yes, certain prospective bidders may be excluded from the competition for a number of reasons listed in Article 101 of the GPL, such as poor performance under an earlier contract with the public agency, forgery of certificate or bidder documentation, bankruptcy, or discrimination against women or aboriginals.

In addition, as stated above, it is also possible to exclude prospective bidders from the competition through a pre-qualification process which is specifically stated in the tendering documentation. Where a pre-qualification process has been established, only those that meet the requirements may submit a bid.

# 4. Bidder Selection

## a. Are there any rules on the selection criteria?

Article 52 of the GPL states that the award of a contract conducted by an entity shall follow one of the following principles and the principle adopted shall be specified in the tender documentation:

where a government estimate is set for the procurement, a tenderer whose tender meets the requirements set forth in the tender documentation and is the lowest tender within the government estimate shall be awarded (the principle of the lowest tender when a government estimate is set).

where no government estimate is set for the procurement, a tenderer whose tender not only meets the requirements set forth in the tender documentation with a reasonable price, but is also the lowest tender within the budget amount shall be the winning tenderer (the principle of the lowest tender when a government estimate is not set).

the tenderer whose tender meets the requirements set forth in the tender documentation and is the most advantageous one shall be the winning tenderer (the principle of the most advantageous tender).

in the case that an entity prescribes in the tender documentation that contracts may be awarded to different tenderers for different items or different quantities, the spirit of competition as to the lowest price or the most advantageous tender shall be respected (a mixture of principle of the lowest and the most advantageous tender).

## b. Is prequalification an option? If so, what are the requirements? What is the procedure?

Prequalification is an option. According to Article 18 (2) of the GPL, the procuring entity may conduct "selective tendering procedures" under which a public notice is given to invite all interested suppliers to submit their qualification documents for a pre-qualification evaluation based upon specific qualification requirements and, after the evaluation, the qualified suppliers are invited to tender.

Article 20 of the GPL provides for the requirements as follows:

"Under any of the following circumstances, an entity may apply selective tendering procedures to a procurement of a value reaching the threshold for publication:

where there is a recurring demand

where the review of tenders takes a long time

where the supplier's cost to prepare for a tender is high

where the qualification requirements for suppliers are complicated

where it is a procurement concerning research and development."

Article 21 of the GPL provides for the procedures as follows:

"In order to apply the selective tendering procedures, an entity may conduct a qualification evaluation in advance and establish a permanent list of qualified suppliers; provided, however, that the entity shall always allow suppliers to request a qualification evaluation and periodically review and update the permanent list of qualified suppliers."

## d. Do “blacklists” for bidders exist? If so, what are the conditions for unlisting?

According to Article 101 of the GPL, suppliers in one of the following situations will be notified by the procuring entity that if the suppliers fail to protest the notification within 20 days after receiving the notification, they will be published in the Government Procurement Gazette:

where the supplier allows any others to borrow its name or certificate to participate in a tender

where the supplier borrows or assumes any other's name or certificate or uses forged documents or documents with unauthorized alteration to tendering, contracting, or performing a contract

where the supplier has substantially reduced the work or materials without obtaining a prior approval

where the supplier forges or alters without authorization documents related to tendering, contracting, or contract

where the supplier participates in tendering during the period when its business operation has been suspended because of a disciplinary action

where the supplier has committed any of the offenses prescribed as violations of comparative bidding in Articles 87 to 92 of the GPL hereof, and has been sentenced by a court of the first instance

where the supplier refuses to execute a contract without due cause after the award

where an inspection indicates any serious non-conformity with the contractual requirements

where the supplier does not fulfil its obligation of guarantee after inspection and acceptance

where the time limit for contract performance is seriously delayed due to causes attributable to the supplier

where the supplier is in breach of the requirements of Article 65 by assigning a contract to others

where a contract is rescinded or terminated for causes attributable to the supplier

where the supplier is undergoing a bankruptcy procedure

where the supplier seriously discriminates against women, aborigines, or persons from disadvantaged groups.

For situations 1 to 5 or a sentence of imprisonment under situation 6, a supplier whose name has been published in the Government Procurement Gazette is prohibited from participating in tendering, or being awarded or sub-contracted within 3 years. As to situations 7 to 14 or imposition of detention, fine, or probation under situation 6, the period in which the suppliers are prohibited to participate in the tendering is 1 year following publication. However, in the case that the original disciplinary action or the judgment has been overruled and that the overruling judgment becomes final, the supplier should be removed from the blacklist.

## e. Does the involvement of a company in the set-up of a procurement procedure exclude the company from said procedure due to conflict of interest?

Yes. Article 39 of the GPL states that the supplier entrusted with the project management and the supplier handling the planning, design, construction or supply shall not be affiliated with each other or affiliated with the same other enterprise.

## f. Can bidders combine to submit a bid (bidder consortia)? What limitations apply?

According to Article 25 of the GPL, the procurement entity may, by the provisions set forth in the tender documentation, allow the bidders to combine to submit a bid depending on the characteristics of an individual procurement. However, the joint tendering should only be permitted where it can increase the competition among suppliers or not restrain competition without due cause. Article 25 of the GPL also regulates that a joint tendering by suppliers in the same line of business shall meet the following requirements set forth in the Fair Trade Act:

where the joint tendering should be able to unify the specifications or models of goods or services for the purpose of reducing costs, improving quality, or increasing efficiency

where the joint tendering should be able to promote research and development for goods, services, or markets for the purpose of upgrading technology, improving quality, reducing costs, or increasing efficiency

where each of the suppliers should be able to develop a separate and specialized area for the purpose of rationalizing operations

in the case that the suppliers enter into agreements concerning solely the competition in foreign markets for the purpose of securing or promoting exports

where joint acts with regard to the importation of foreign goods, or services for the purpose of strengthening trade

where joint acts limiting the quantity of production and sales, equipment, or prices for the purpose of meeting the demand in an orderly way, because of an economic downturn, that the enterprises in the same industry have difficulty maintaining their business or encounter a situation of overproduction

where joint acts for the purpose of improving operational efficiency or strengthening the competitiveness of small and medium enterprises

where joint acts required for the purpose of improving industrial development, technological innovation, or operational efficiency.

## g. Can members of a bidder consortium be changed during a procurement procedure?

Generally, no. During the tendering procedures, the bidder consortium is not allowed to change its members if its bidding documents have been submitted to the procuring entity. Regarding after the contract is awarded, under Article 10 and 11 of the Regulations for Joint Tendering, in the case that a member supplier becomes insolvent or has encountered serious problems to the extent that the member can no longer jointly fulfil the contract, other member suppliers participating in a joint tendering may, with prior approval of the entity, jointly provide another qualified supplier who has the equivalent qualification as the original member supplier to jointly execute the rights and responsibilities of the contract.

## h. Do limitations apply for participation of related bidders in the same procurement procedure with competitive bids?

Under Article 33 of the Enforcement Rules of the GPL, there shall be only one tender submitted by each tenderer for each procurement. In the case of violation, the submitted tender will either not be opened or not accepted. According to an interpretation made by the competent authority, the Public Construction Commission (PCC), the following participation of the related bidders will be deemed as an identical tender:

where two branches of the same parent company participate in the same tender process

where the parent company and its branch participate in the same tender process

where three delegated companies from the same licensing company participate in the same tender process.

However, the situations below do not constitute a violation of Article 33 of the Enforcement Rules of the GPL under the PCC's interpretations of the GPL:

where more than or equal to 3 domestic agents or dealers of the same foreign supplier participate in the same tender process

where both the manufacturer and the dealer of the same product participate in the same tender process, provided that there is no further misconduct between the two entities

where two legally and operationally independent property and life insurance companies from the same holding company participate in the same tender process.

## i. Is there a special regulation or a special requirement for a foreign company to participate in a procurement procedure?

According to Article 17 of the GPL, for foreign companies originating from a country with which Taiwan has signed a treaty or an agreement, the terms and conditions listed in the treaty or the agreement will be applicable to their participation in the tender process. On the other hand, for foreign companies not originating from a country with which Taiwan has a treaty or agreement, the procuring entity may state in the tender documentation that the "equality rule" in the GPL will not apply.

With regard to the formality, the qualifications of the supplier and the qualification documents to be submitted by foreign suppliers may be prescribed separately in the tender documentation based on actual needs. A notarized or certified Chinese translation should be attached to the qualification document as required above.

# 5. Specifications

## a. Are there any rules on the specifications?

Yes, Article 36 (1) and (2) of the GPL provide that an entity may prescribe basic and/or specific qualifications for tenderers based on actual needs. However, according to Article 37 of the GPL, the entity should not restrain competition unduly and must only prescribe the qualifications essential to contract performance when prescribing the qualifications.

A tender submitted by a supplier who does not meet the qualification requirements shall not be accepted.

## b. Are bidders allowed to change the specifications or submit their own standard terms of business?

No. However, according to Article 41 of the GPL, where a supplier has questions about the content of the tender documentation, including proposed revisions of the procurement contract, these questions shall be submitted in writing to the entity before the deadline set forth for this purpose in the tender documentation. The entity shall issue a written reply to the inquiring supplier before the deadline set forth for this purpose in the tender documentation, and may publish the reply if necessary. In a case where any amendment or supplement to the content of the tender documentation must be made as a result of these questions, the entity shall publish a notice concerning the amendment or supplement, or notify each supplier in writing.

## c. Is the protection of Small and Medium Enterprises addressed in procurement legislation? If so, how?

Under Article 97 of the GPL, the competent entity, that is, the PCC, may take into account the requirements of the relevant laws and regulations to adopt measures that assist small and medium enterprises when contracting or subcontracting to the extent not less than a certain percentage of government procurement in value. The PPC further promulgated the Regulations Governing Assistance for Small and Medium Enterprises Participating in Government Procurement (Assistance Regulations) to enforce the spirit in the GPL.

According to the Assistance Regulations, the following measures can be taken to promote or to assist Small and Medium Enterprises:

for a procurement value of less than NTD 1 million, small and medium enterprises shall be awarded in principle except for those small and medium enterprises that are incapable of carrying out the procurement in question, when their competitiveness is inadequate, or when their tendering prices are unreasonable or fall under other exception clauses stated by the GPL

the competent authority shall , acting with the Ministry of Economic Affairs, publish the procurement value of each of the entities and the percentage to be contracted or subcontracted to the Small and Medium Enterprise.

# 6. Contract Award

## a. Are there any rules on the award of contracts?

Article 52 of the GPL provides that the awarding of a contract should follow one of the following principles, and the principle adopted should be specified in the tender documentation:

where a government estimate is set for the procurement, a tenderer whose tender meets the requirements set forth in the tender documentation and is the lowest tender within the government estimate shall be awarded

where no government estimate is set for the procurement, a tenderer whose tender not only meets the requirements set forth in the tender documentation with a reasonable price, but is also the lowest tender within the budget amount shall be the winning tenderer

the tenderer whose tender meets the requirements set forth in the tender documentation and is the most advantageous one shall be the winning tenderer

to adopt a multiple award. An entity may prescribe in the tender documentation that contracts may be awarded to different tenderers according to different items or different quantities, but the spirit of competition as to the lowest price or the most advantageous tender shall be respected.

Article 56 of the GPL further provides that where an award is conducted in accordance with the third principle above, the evaluation criteria set forth in the tender documentation should be used to determine the most advantageous tender by comprehensively evaluating the technology, quality, function, commercial terms, or price of the tenders with a ranking or score. The most advantageous tender should be determined by the head of the procuring entity or with the concurrence of the majority of the evaluation committee. If the most advantageous tender is unable to be determined, negotiations may be conducted, and then another comprehensive evaluation must be made to determine the most advantageous tender.

## b. Are there any limitations regarding the offered bid price?

Yes. Under Article 58 of the GPL, where a contract is to be awarded to the lowest tender, an entity may set a time limit for the tenderer offering the lowest tender to provide an explanation or a security if the total or a part of the offered price is so low that it obviously appears to be unreasonable, and the quality of performance is likely to be impaired or the contract is not likely to be performed in good faith, or there is any other extraordinary situation. If the tenderer fails to submit a reasonable explanation or a security before the deadline set forth by the entity, the contract may not be awarded to the tenderer, and the tenderer offering the second lowest tender shall then be deemed as the tenderer offering the lowest tender.

## c. Are there any rules on alternative bids?

Pursuant to Article 35 of the GPL, the procurement entity may provide in the tender documentation that a supplier is allowed to submit an alternative bid before the deadline of the tender in technology, technical methodology, materials, or equipment to shorten the construction period, save expenditure, or increase the efficiency, provided that the original function requirement is not impaired.

# 7. Exemptions to Competitive Bidding

## a. Are there any exemptions to competitive bidding, i.e. under what conditions is a direct award/single sourcing permissible?

Except as otherwise stated in Section 3(a) or where otherwise prohibited by the treaties or agreements to which Taiwan is a party, Articles 43 and 44 of the GPL stipulate the exemptions to competitive bidding by specifying the provisions which are preferable to domestic bidders or suppliers.

According to Article 43 of the GPL, the procurement entity conducting procurement may specify one of the following measures in the tender documentation:

to request from a tenderer commitments to purchase goods locally produced to a certain extent, transfer technology, have inward investment, facilitate local exports, or take any other similar measures, and include such commitments in the evaluation, provided that they do not make up more than one-third of the evaluation

where a foreign supplier's tender is the lowest tender according to the principle of contract award prescribed in Article 52, a domestic supplier may be awarded at this price by preference.

Pursuant to Article 44 of the GPL, where a foreign supplier's tender is the lowest bid according to the principle of contract award prescribed in Article 52, an entity conducting a particular procurement may, except where otherwise prohibited by the treaties or agreements to which the nation is a party, award by preference to a local supplier which supplies items with at least 50% of its value added locally, or supplies construction work or services locally, provided that the awarded price does not exceed the aforementioned lowest bid by a certain percentage. No preference should be given except when the preference meets the policies for employment or industrial development, and there should be no percentage exceeding 3% or a period of preference exceeding five years.

## b. What are the consequences for violation of the competitive bidding requirement?

Violators of the competitive bidding may face possible criminal liability under Articles 87, 88, 90 and 91 of the GPL. The highest punishment could include up to years of imprisonment depending on the offenses which the violators committed.

# 8. Remedies and Enforcement

## a. Are there any remedies and enforcement mechanisms in the procurement legislation?

According to Article 75 of the GPL, with regard to disputes arising from the tendering or awarding proceedings, a participating or unsuccessful bidder may file an objection against the decisions made or the award result rendered with the procurement entity. If the bidder is not satisfied with the result of the objection it raised, it may seek further remedies with the PCC, or the complaint review board for government procurement under the local government.

## b. Are remedies available outside the scope of procurement legislation, e.g. civil law damage claims?

After the procurement contract is awarded to and concluded with the successful bidder, any disputes related to the performance of the procurement contract should be conducted in accordance with the dispute resolution mechanisms which include the mediation proceedings hosted by the PCC, lawsuits in the courts, or the arbitration proceedings held by the arbitral tribunal, which requires that the parties have an arbitration agreement in writing for the dispute. The contracting parties, that is, the entity and the supplier, may be based on the Civil Code or other applicable provisions involving liability for damage to initiate civil damage claims arising from a breach of contract with the courts.

## c. Is there a specific forum before which procurement disputes are heard?

For disputes arising from the tender or award proceedings, the forum before which the disputes are heard is the procurement entity which will make the decisions for the procurement or render the award result.

The Instructions to Bidder (ITB) for government procurement will usually prescribe how disputes will be handled.

## d. Are there any timing requirements for the review?

With regard to disputes arising from the tender or award proceedings, Article 75 of the GPL requires a participating or unsuccessful bidder who would like to file an objection against the decisions or the award result to file the objection within 10 days after the notice issued by the procurement entity is received or the publication is announced.

The ITB for government procurement will usually provide the time frame within which the contract needs to be executed by the awarded party and the procurement entity.

Regarding disputes concerning the performance of the procurement contract, the time frame in which a claim can be made with regard to a right will vary in accordance with the statutory time limitation pertaining to this right.

## e. What are the main preconditions for review?

Pursuant to Article 74, the remedy proceedings prescribed in the GPL apply only to disputes arising from the procedures of the invitation to tender, evaluation of tender, or the award of the contract. For instance, disputes related to any unequal treatment stated in the tender documentation, a direct ward violating the evaluation principle set forth in the GPL, etc. On the other hand, if the parties do not dispute the procuring process but dispute the performance of the contract or interpretation of certain terms and conditions, these disputes are not admissible for the review and complaint proceedings under the GPL. Rather, they should be resolved via a civil procedure under the Code of Civil Procedure or a mediation procedure under Article 85-1 of the GPL.

## f. What are admissible grounds for starting a review proceeding?

As stated in the Article 75 of the GPL, a supplier may, during the period specified below, file a protest in writing with an entity if the supplier believes that the entity is in breach of laws or regulations or of a treaty or an agreement to which this nation is a party so as to impair the supplier's rights or interests in a procurement. As a result, the admissible grounds under the GPL are (1) the procuring entity violates the procedural requirements set forth in the GPL, the treaty, the agreement or the relevant regulations, and (2) the violation caused an infringement of rights and interests.

## g. Does a review proceeding affect an ongoing procurement procedure or an awarded contract respectively?

No, a review proceeding generally will not affect an ongoing tender procedure or an awarded contract, unless the situation under Article 82 (2) or Article 84 (1) is met. Under Article 82 the GPL, the Complaint Review Board for Government Procurement (CRBGP) may suspend the proceedings before the review is completed, if it deems necessary. Also, Article 84 states that where a procuring entity finds the protest or complaint justifiable, the procuring entity shall nullify or change the initial result or suspend the procurement procedures, except for emergencies or in the public interest, or where the causes of the complaint or protest are not likely to affect the procurement.

## h. What are the consequences of a successful review proceeding for the affected procurement procedure or awarded contract respectively?

According to Article 84 (1) of the GPL, in a case where the procuring entity finds the objection justifiable, it shall nullify or change the initial result or suspend the procurement procedures, except for emergencies or in the public interest, or where the causes of the complaint or protest are not likely to affect the procurement.

According to Article 82 (1) of the GPL, when a dispute has been filed with the CRBGP and is found in violation of the GPL, the CRBGP may take the following actions:

recommend various ways to the procuring entity to proceed under Article 82 of the GPL

specify that the procuring entity is in breach of laws and regulations, which causes the procuring entity to take alternative lawful actions under Article 85 of the GPL.

In addition, the supplier may request the procuring entity to reimburse the necessary expenses incurred by the supplier for the preparation of the tender and the filing of the protest and complaint.

## i. How long does a judicial proceeding for review take?

Under Article 78 (2) of the GPL, the CRBGP shall complete its review within forty days from the date following the date of receipt of the complaint, and shall notify the supplier and the entity of its decision in writing. If necessary, this period may be extended for another forty days. If the supplier does not agree with the CRBGP's decision, it may file a lawsuit with the administrative court, and the administrative proceeding may last six months to one year. The parties may further appeal to the Supreme Administrative Court, which will also require about six months to one year to render the final judgment.

## j. Must unsuccessful bidders be notified before the award? If so, when?

The procuring entity shall not notify anyone of the outcome before the award. Once an awarded bidder is announced, all participating bidders will be notified of the outcome according to Article 52 of the GPL.

## k. Are review proceedings common?

Yes. According to statistics summarized by the CRBGP of the PCC, there were 427 complaints filed to the PCC in 2016.

## l. Are damage claims in relation with procurement procedures common?

No. In the case of violation of the procedural requirements set forth in the GPL, Article 85 of the GPL only gives the supplier an option to request the procuring entity to reimburse the necessary expenses incurred by the supplier for the preparation of the tender and the filing of the protest and complaint, which does not include legal fees or other compensation for the total damage suffered.

## m. What are the leading court decisions involving procurement disputes?

In Taiwan, there have been several court decisions related to procurement disputes. A resolution rendered by the Supreme Administrative Court in 2004 held that a dispute arising from the tender or award proceedings should be regarded as a dispute pertaining to public laws, and the remedies resorted to for these disputes must involve administrative proceedings and the administrative courts. A dispute between the awarded party and the entity after the contract is awarded and concluded should be regarded as a dispute pertaining to civil laws and the remedies for these disputes should involve the civil courts or arbitration proceedings in a case where the parties have an arbitration agreement.

# 9. Other Relevant Rules of Law

## a. Are there any related bodies of law of relevance to procurement by public agencies?

In addition to the GPL, the Law of Administrative Procedures, the Anticorruption Act, and the Ethics Regulations for Procurement Personnel promulgated by the PCC are relevant to procurement by public agencies.

## b. Does a specific contract law apply for public contracts?

In general, contracts awarded in accordance with the GPL or the Promotion Act are deemed civil contracts and subject to general civil laws governing the contractual relationship between the parties. However, where the content of the contract involves a certain transfer of power and may be deemed as an administrative contract, Article 146 of the Administrative Procedure Act may apply, enabling the authority to unilaterally adjust the terms of the contract to the extent necessary or terminate it for the purpose of preventing or eliminating any material jeopardy to the public interest.

# 10. Industry sectors of special importance or with a specific procurement regime

## a. Are there any specific laws or practices that apply in the technology sector?

There are no specific laws or practices that apply when procuring technology. However, the procurement entities can prescribe specific terms and conditions in the procurement contract by and between the agencies and the awarded party for the procurement of technology.

## b. Are there any specific laws or practices that apply in the defense sector?

Special regulations regarding procurement for weapons, ammunition, war supplies, or related to national security or national defense are set forth in Article 104 of the GPL:

where the nation is confronted with a war, in mobilization for a war, or in a war, the GPL will not apply

where the procurement is confidential or strictly confidential, the tender information shall not be made public under the GPL

where there is an emergency which may jeopardize an important military mission, the standard time limits under the GPL will not apply

where there is only one supplier invited to tender, the tender document may specify particular information about the trademark, trade name, patent, design, source of origin, producer or the supplier in spite of Article 26 of the GPL.

## c. Are there any specific laws or practices that apply in the health care sector?

Yes. In a case where the National Health Insurance Administration reimburses the cost the contracted medical institutions spent, the National Health Insurance Act rather than the GPL will apply. However, when public hospitals purchase medicines from pharmaceutical companies or other medial equipment, the GPL still applies.

## d. Are there any specific laws or practices that apply to any other particular industry sector?

Yes. For instance, the establishment of power generation by private entities will be subject to the Electricity Act or the Renewable Energy Development Act. In addition, where the Taipei City Government invites investors to join a development project under the Mass Rapid Transit Act, the GPL will not apply. Under the PCC's interpretations, in a case where government entities recruit a temporary workforce based on personnel regulations, the GPL will not apply.

# 11. Looking Ahead

## a. Are there any proposals to change the law in the future?

As far as we know, the PCC has promoted a proposal for green procurement which encourages public entities to procure more green or eco-friendly products. In addition, the PCC has also proposed amendments to the current regulations governing public construction quality management. These proposals have not yet been approved by the Legislative Yuan.

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