

Amendments to Government Procurement Act in Publishing Deficient Suppliers

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Abstract: A vast amount of public funding is appropriated for procurement yearly. If a supplier is determined to be a deficient supplier and listed as such in the Government Procurement Gazette, the supplier is suspended and loses the rights to submit tenders, be awarded any contracts, or even become a subcontractor on a public project. This penalty greatly affects a supplier's business operation. The frequent occurrence of misjudgment regarding deficient suppliers has become a source of dispute and a detriment to national interests. The objective of this study is to analyze the causes of disputes using case studies. Flaws in the Publication of Deficient Suppliers in the Government Procurement Act (GPA) are examined to serve as a reference for future law-making. Cases on disputes over deficient suppliers are first collected. Key points from the review board meetings and the committee members' perspectives are then reviewed and summarized. Finally, recommendations are provided based on findings from the cases of deficient supplier disputes and determinations made by the Complaint Review Board of Government Procurement. A case study approach is carried out to explain the feasibility of the revised GPA. The results render that redundant stipulations could be repealed from the Publication of Deficient Suppliers in GPA, which reduces its content from 14 to eight items. The suggested revised version is more concise and could ameliorate the issue of misjudgment on deficient suppliers. The proposed process may provide a reference for countries dealing with government procurement, giving regulations on the publication of deficient suppliers the credibility it deserves.

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1. Introduction

Procurement is a necessary step in policy execution, and has direct effects on policy implementation results. Thousands of procurements go through the government each year, involving enormous budgets. The funding comes from public sources and therefore transparency during the implementation may affect suppliers' benefits as well as policy justice (Ohashi, 2009). Both financial loss and labor costs to the government and suppliers are inevitably incurred once a dispute happens, regardless at which stage it occurs (Reich, 2009).

Prior to the enactment of the Government Procurement Act (GPA), information concerning public procurement was red taped, which resulted in asymmetrical information. Most suppliers had difficulty obtaining public procurement information. This situation prevented fair competition, increased the procurement costs and created regional monopolies (Chen, 2009). Even if an outsider won the contract, difficulties concerning completion of the project and obtaining profits were insurmountable (Wang, 1999). In addition, prior to the GPA, when encountering unlawful practices or misconducts, all that a government agency could do was put the supplier on the blacklist. However, since the information is not shared between agencies, this penalty can only restrict the supplier to those agencies

that put the supplier on the list. The supplier may still submit tenders to other agencies. The GPA in Taiwan was enacted in 2009, and regarded as a major reformation in public procurement. In addition to obtaining eligibility to join international organizations, this regulation clarifies the grey areas between the executive and auditing branches (Jang, 2010; Yang, 2007). Procurement policies are spearheaded by the executive agencies to regulate the procurement system. The regulations include dispute and appeal processes in order to effectively monitor the executive agencies, ensure the fairness and openness of the procurement process, and provide a clear appeal process for suppliers. Disputes during the government procurement process often result in high social costs (Tserng and Teng, 2009; Chou, 2012). Although studies concerning government procurement regulations are profuse, very few of them focus on the issue of suspended suppliers, the so-called "deficient suppliers." This is an area in need of further exploration.

Among the appeals by deficient suppliers, this study found that over 60% of the determination was successfully overturned, which means serious misjudgment was made by the representative entity. However, government procurement makes up more than 50% of the market capital. Transactions between the government and suppliers are protected by

regulations. Once published in the Government Procurement Gazette, suppliers are suspended for up to three years starting from the publication date. Suspended suppliers cannot submit any tenders, win any contracts, or even become subcontractors, which greatly affect suppliers' marketing opportunities. Misjudging deficient suppliers have been a necessary evil due to administrative considerations. However, some occurrences are the result of the entity's unfamiliarity with the GPA. If the regulations can be improved without compromising the legality, such appeals may be reduced.

Case studies, which are called precedents in the legal field, are often adopted as means of analysis in the study of law (Robinson, 2009). The objective of the present study is to determine the suitability of regulations (i.e. Article 101 of GPA) used to publish the deficient suppliers in the Government Procurement Gazette by analyzing appeals of suppliers deemed "deficient." The results may provide a reference for law-makers when making future amendments, giving regulations on the publication of deficient suppliers the credibility it deserves.

This study first gives background information on deficient suppliers in the GPA, including procurement definition, entity obligations, public project contracts, and deficient suppliers conditions. The following section explains the methodology used to analyze the deficient supplier cases published by the Public Construction Commission. Data sources and types of deficient suppliers are discussed. Finally, amendment suggestions are proposed according to these analytical results. Conclusions are drawn and directions for future research are proposed in the final section.

2. Background Information

2.1. Procurement Definition

Procurement refers to an exclusive right, a sole source product or supply, a work of art, or a secret which can be supplied only by a particular supplier and no reasonable alternative or substitute exists (GPA, 2011). Procurement is a technique of acquiring objects in adequate quantity and quality and delivering them to the procuring entity in the most efficient manner within the required time frame at a given location (Baily et al., 2010). To accomplish such acquisition at the lowest cost is still the standard for most bids.

The U.S. Federal Acquisition Regulations define procurement as all stages involved in the process of acquiring supplies or services, beginning with the determination of a need for supply of services and ending with contract completion or closeout. This definition regards procurement as a government's acquisition of supplies or services through purchase or loan with contract and government budget. It covers

existing suppliers or services or those yet to be created, discovered, presented or appraised. Given the above definitions, government procurement is defined in this study as the use of infinite private resources to achieve tangible governmental goals where the government establishes rules of conduct and shares the interests with the public.

2.2. Procuring Entity Obligations

Procuring entities are obligated to remunerate and assist contractors with project execution. Details of the obligations are described below:

2.2.1. Remuneration

According to Item 1, Article 505 of Civil Code in Taiwan, "Remuneration shall be made at the time of delivery of the work, or, if no delivery can take place, at the time of its completion." Based on Freedom of Contract, the amount of remuneration and the payment schedule shall be determined by the parties involved. However, large-scale public projects often involve major amounts of capital, long periods, and great complexity. For this reason, procuring entities often commission consulting or architectural firms to perform planning, designing, and cost estimating (Koppenjan et al., 2011). Despite this, the complexity and unpredictability of these large-scale projects still lead to disputes over contract negotiations. Article 506 of Civil Code stipulates that "If, at the time of the making of the contract, only an approximate estimate has been made for remuneration, and if, owing to circumstances for which the proprietor is not responsible, the remuneration will greatly exceed the estimate, the proprietor may rescind the contract either during the execution of the work or after its completion." In the case where the contract is for the construction of a building or other works executed on land, or for vital repairs of the said building or works, the proprietor may only demand a reasonable reduction of the remuneration; or, if the work is not completed, he/she may notify the contractor to cease the work and may rescind the contract. Entities must consider both contract and budget execution at the same time. Giving procuring entities the right to rescind the contract also serves as protection for the contractor, who may be compensated for the rescission.

2.2.2. Project Execution Assistance

If an action of the proprietor is necessary for the execution of the work and the proprietor fails to take action, the contractor may fix a reasonable deadline and require the proprietor to do the action within such deadline. If the proprietor fails to perform the action within the deadline, the undertaker may rescind the contract, and demand damages arising therefrom. However, damage arising due to rescinding the contract is not a clear legal concept. In current construction practice, the compensation only covers

rental payments and those associated with on-site expenses (Lin, 2000).

2.3. Legality of Public Project Contracts

Private contractual relationship refers to the legal act established by two opposite parties in agreement, which is the manifestation of private autonomy. In general, a contract refers to a legal action in private law (Herings and Kanning, 2008). As to the legality of tender invitations, tender submissions, and contract awards in public construction, some scholars think that the act of tender invitation is to solicit offers; the supplier's tender submission constitutes an offer, while the procuring entity's contract award is a promise. On the other hand, some scholars hold the opinion that the act of tender invitation itself is an offer and the supplier's tender submission constitutes a promise (Lin, 2000). The former more appropriately describes current procurement practice in Taiwan. The purpose of tender invitation is to solicit offers and unspecified suppliers to obtain competitive pricing and, theoretically, the most economical results.

When the suppliers accept the tender invitation, the contractual act is not yet established. If a large number of suppliers respond to the tender invitation, the procuring entity may award the contract to the lowest (best) bidder in accordance with the law, which constitutes a promise, and the contract is binding. Chen and Luo (2000) think that the supplier's act in stating the tender price and submitting the tender to the procuring entity constitutes an offer. According to the Item 1 of the Article 95, Civil Code of Taiwan, "An expression of intent *inter absentes* becomes effective at the moment when the notification of the expression reaches such other party, except when the withdrawal of the notification previously or simultaneously reaches such other party." Suppliers that have submitted tenders are bound by contract. Meanwhile, as long as the procuring entity abides by the terms of the contract, the contract stays valid.

2.4. Deficient Suppliers Conditions

When GPA was promulgated in 1998 in Taiwan, the term "deficient supplier" was referenced in Article 101. The purpose was to prevent unlawful acts by deficient suppliers and harm to other entities, so as to establish an environment that would foster positive competition among the suppliers. However, the current regulation no longer includes such a term. The term "deficient supplier" is still in use in practice but no longer clearly defined in the GPA. Bearing in mind the language and intent of the GPA, "deficient supplier" is defined in this study as, "Suppliers who commit acts prohibited by GPA. During the period in which the suppliers' services are suspended by the government, such suppliers are considered deficient suppliers."

Procuring entities shall notify the suppliers in writing of the facts and reasons related to Article 101 of the GPA, which may establish the preliminary conditions constituting deficient suppliers. If the supplier does not protest within a specified time frame, or if the protest is turned down by the entity, the supplier may file a complaint to the Complaint Review Board of Government Procurement. If the supplier does not file the complaint within the specified time frame, the filed complaint is turned down by the Review Board, or if the supplier fails to do any of the above, the supplier will be listed in the Government Procurement Gazette. Once solid findings are established to determine deficient suppliers, said suppliers shall be suspended for a minimum of 1 year and maximum of 3 years effective immediately following publication (Article 103). Article 101 of the GPA states that where a procuring entity finds suppliers in any of the following circumstances, the entity shall notify the supplier of the facts and reasons related thereto. Suppliers are notified that those suppliers who do not file a protest will be listed in the Government Procurement Gazette.

1. where the supplier allows any others to borrow its business certificate to participate in a tender;
2. where the supplier borrows or assumes any other's business certificate or uses forged documents or documents with unauthorized alteration to tender, contract, or perform a contract;
3. where the supplier has substantially reduced the work or materials without obtaining prior approval;
4. where the supplier forges or alters documents related to tendering, contracting, or contract performance without authorization;
5. where the supplier participates in tendering during the period when its business operation has been suspended by a disciplinary action;
6. where the supplier has committed any of the offenses prescribed in Articles 87 to 92 hereof, and has been sentenced by a court of the first instance;
7. where the supplier refuses to execute a contract without due cause after it is awarded;
8. where an inspection indicates any serious non-conformity with contractual requirements;
9. where the supplier does not fulfill its warranty obligation after the project is completed;
10. where the project is seriously delayed due to causes attributable to the supplier;
11. where the supplier is in breach of the Article 65 by subcontracting the awarded projects;
12. where a contract is rescinded or terminated for causes attributable to the supplier;
13. where the supplier is under the procedure of

bankruptcy; or

14. where the supplier seriously discriminates against women, aborigines, or personnel of disadvantaged groups.

3. Case Analysis of Deficient Suppliers

3.1. Case Studies

This study adopts a case study approach to explore deficient supplier cases and to identify sources of disputes. The analyzed results are served as the basis for suggestions for amendments to the Publication of Deficient Suppliers in the GPA. A case study can be categorized as an interrelationship study within Descriptive Research, which refers to intensive analysis of a limited number of symbolic cases to conduct detailed exploration of single or group instances in order to search for ways to future development (Yin, 2008). A case describes an actual scenario, which is typically documented in words. The description would stimulate the reader's thinking, allowing said reader to recognize the truth and identify the issue and ways to solve problems. A case can also take the form of video documentary, pictures, drawings, and recordings (Ellet, 2007). Case study can be further divided into four categories: 1) single case design on single case analysis, 2) multiple case designs on single case analysis, 3) single case design on multiple case analyses, 4) and multiple case designs on multiple case analyses (Yin, 2008). The purpose of this study is to provide recommendations for amendment to the Publication of Deficient Suppliers in GPA according to the appeal results made by the Dispute Review Board. For this reason, single case design on multiple case analyses has been adopted for analysis. The focus of single case analysis is on the Publication of Deficient Suppliers in GPA (Article 101) while the sources of multiple case analyses are the Items in Article 101 of the GPA with a higher percentage of violations.

3.2. Data Source

To obtain an objective, fair, and representative sampling of cases, *Appeals in Government Procurement* published by the Public Construction Commission was used to conduct case studies. Cases included in the books were compiled by private entities commissioned by the Public Construction Commission. The representative cases with educational purposes were then categorized and published in volumes, which contains both qualified and sufficient cases. The first two volumes compile cases from 2000 and 2001. Volume III includes the ones after the GPA was amended in February, 2001 and cases in 2001 and 2002. Most of the cases compiled in Volumes I to III took place between 2001 and 2003 and were published in 2005. Volume IV, collecting general cases from 2003 to 2005 for references, was published in 2007. The Public

Construction Commission published 72 cases that took place between 2000 and 2005 with the intent to promote and educate the public about procurement appeals.

3.3. Research Process

The flow chart for the research process is shown in Figure 1 and explained as follows:

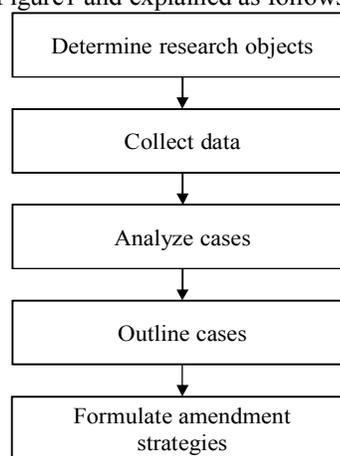


Figure 1. Research Process.

Determining research objects:

The purpose of this study is to provide recommendations for the amendment of the GPA concerning the listing of deficient suppliers. Therefore, the focus of case analysis is on the source of disputes regarding deficient suppliers.

Collecting data:

Appeal cases compiled in *Appeals in Government Procurement* Volumes I-IV published by Public Construction Commission (PCC, 2003a, 2003b, 2005, 2007) are the basis for the case base. The case base covers details and decisions made by the Complaint Review Board of Government Procurement.

Analyzing cases:

Analysis is conducted with single case design against multiple case analyses to examine each of the 72 cases in *Appeals in Government Procurement* Volume I-IV. The cases are categorized to identify frequent causes of disputes and further compiled after the analysis.

Outlining cases:

The outline of each case is carried out according to the key points from the review board and the comments of the members. Their judgments are considered because they cover both the legal and practical aspects. Understanding the board members' thinking could provide both the procuring entity and supplier a basis for proper conduct.

Formulating amendment strategies:

Through case analysis, the type of dispute and the relationship among regulations are used to

identify the issues and causes of disputes. Both the procuring entity and the supplier can then formulate strategies that prevent similar disputes. In this study, the legal aspect in each case is examined and reflected upon to identify areas of improvement, which are presented with relevant data as a reference for lawmakers.

3.4. Deficient Supplier Types

Table 1 shows the result of analysis of the 72 cases of deficient suppliers. There are no violations of Items 5, 13, and 14, Article 101 of the GPA while there are multiple violations against items 7, 10, and 12.

Table 1. Types of Deficient Suppliers

Violation Items of Article 101		Number of cases	Valid Appeals
Item 1	The supplier allows any others to borrow its business certificate to participate in a tender.	6	
Item 2	The supplier borrows or assumes any other's business certificate or uses forged documents or documents with unauthorized alteration to tender, contract, or perform a contract.	10	
Item 3	The supplier has substantially reduced the work or materials without obtaining prior approval.	4	
Item 4	The supplier forges or alters documents related to tendering, contracting, or contract performance without authorization.	3	
Item 5	The supplier participates in tendering during the period when its business operation has been suspended by a disciplinary action.	0	
Item 6	The supplier has committed any of the offenses prescribed in Articles 87 to 92 hereof, and has been sentenced by a court of the first instance.	2	
Item 7	The supplier refuses to execute a contract without due cause after it is awarded.	18	
Item 8	An inspection indicates any serious non-conformity with contractual requirements.	4	
Item 9	The supplier does not fulfill its warranty obligation after the project is completed.	3	
Item 10	The project is seriously delayed due to causes attributable to the supplier.	13	
Item 11	The supplier is in breach of the Article 65 by subcontracting the awarded projects.	2	
Item 12	A contract is rescinded or terminated for causes attributable to the supplier.	20	
Item 13	The supplier is under the procedure of bankruptcy.	0	
Item 14	The supplier seriously discriminates against women, aborigines, or personnel of disadvantaged groups.	0	
Number of violations		85	
Actual number of cases		72	

Table 1 includes a total of 85 cases counted by "the number of violations." However, 12 cases have multiple violations and Case No. 17 was rejected. Therefore, the actual number of cases is 72. Suppliers with multiple violations against Article 101 are listed in Table 2.

Most of the violations that constitute

deficient suppliers are against Items 7, 10, and 12. Eighteen cases in total are in violation of Item 7, of which 13 were appealed successfully (see Table 3). The 13 cases are in violation of Item 10, of which 9 were appealed successfully (see Table 4). The 20 cases are in violation of Item 12, of which 18 were appealed successfully (see Table 5).

Table 2. Suppliers with multiple Violations

Case No.	Case Title	Items Reported
12	Appeal on procurement for XX columbarium improvement project	Items 7, 10 and 12
14	Appeal on procurement for Sino Medicine Electronic Database project	Items 1 and 2
15	Appeal on procurement for Sino Medicine Electronic Database project	Items 1 and 2
16	Appeal on procurement for Sino Medicine Electronic Database project	Items 1 and 2
22	Appeal on procurement of 1 set professional digital editing and special effects system	Items 7 and 12
26	Appeal on 5 procurement projects including YC89762P Mixer etc.	Items 7, 10, and 12
35	Appeal on procurement for FN-89119PA78PE Granular Activated Carbon	Items 8 and 12
42	Appeal on procurement for XX pedestrian bridge construction	Items 10 and 12
56	Appeal on procurement for demolition of dangerous buildings from 921 earthquake	Items 1 and 2
60	Appeal on procurement of surveillance system	Items 8 and 10
68	Appeal on the procurement of contraband detector	Items 2 and 4
69	Appeal on the procurement of Biomolecular mass spectrometer	Items 1 and 2
17 ¹	Appeal on the procurement of display project for Taiwan Historic and Cultural Park	N/A

Note ¹: The appeal process was not legitimate and therefore the case was rejected.

Table 3. Refusing to Execute A Contract without Due Cause after Project Awarded

Case No.	Case Title	Appealed Successfully
7	Appeal for the procurement for XX County promotion of incinerator construction and operation by private and public sector	Y
8	Appeal for the procurement of digital image processing system	
12	Appeal on procurement for XX columbarium improvement project	Y
13	Appeal for the procurement of cold water pipe replacement in Terminal 1 of XX Airport	Y
18	Appeal for the procurement of delivery of tobacco and alcoholic products	
22	Appeal on procurement of 1 set professional digital editing and special effects system	Y
25	Appeal for the procurement of second phase fermentation storage tank replacement project	Y
26	Appeal on 5 procurement projects including YC89762P Mixer etc.	Y
34	Appeal for the procurement of miscellaneous maintenance and repairs of potholes on airport runway, hangar rigid pavement, and regular pavement	Y
37	Appeal for the procurement of renovation project for the rehabilitation center for the physically and mentally disabled	Y
38	Appeal for the procurement of lighting project for Tender WH57-6, XX Expressway, XX Bridge to Haikou section	Y
43	Appeal for the procurement of keying in direct write-offs, adjustment audit, and deposit audit	Y
45	Appeal for the procurement of Safety Protection project including the hallways, corridors, and stairways for the front administrative building and library	
50	Appeal for the procurement of XX Vocational High School Recreational Center and equipment renovation	
51	Appeal for the procurement of Phase 3, second and third floor addition for XX Township Day Care Center	
53	Appeal for the procurement of XX Bridge construction	Y
57	Appeal for the procurement for environment cleanup and related tasks	Y
67	Appeal for the procurement of 3 divisions of non-staple food delivery including the Northern District (HM93022L172)	Y

Table 4. Schedule Seriously Delayed Due to Causes Attributable to the Supplier

Case No.	Case Title	Appealed successfully
1	Appeal for the procurement and construction of large cavitation tank	Y
2	Appeal for the procurement of the development project for XX City traffic control management system	Y
4	Appeal for the procurement for asphalt tank cleanup project	
12	Appeal on procurement for XX columbarium improvement project	Y
21	Appeal for the procurement of structural EI multiplex equipment	Y
24	Appeal for the procurement and installation of local traffic signals and speed bumps	Y
26	Appeal on 5 procurement projects including YC89762P Mixer etc.	Y
42	Appeal on procurement for XX pedestrian bridge construction	Y
44	Appeal for the procurement 38 items including P275PE fire extinguisher valve controller (TM89570)	
46	Appeal for the procurement of 2 items including table and chair (HB90041P028)	Y
48	Appeal for the procurement of guarding and maintenance contract for Ship No. 001	
49	Appeal for the procurement of M10*15 wire thread (PH90100P190)	Y
60	Appeal on procurement of surveillance system	

Table 5. Rescission or Termination for Causes Attributable to the Supplier.

Case No.	Case Title	Appealed Successfully
3	Appeal for the procurement of traffic signal installation for XX County Police Station	Y
5	Appeal for the procurement of traffic signal installation for XX County Police Station	Y
6	Appeal for the procurement of welded steel plug valves	Y
9	Appeal for the procurement of 2000 annual schedule and small notebooks	
12	Appeal on procurement for XX columbarium improvement project	Y
20	Appeal for the procurement of traffic signal installation for XX County Police Station	Y
22	Appeal for the procurement of digital editing and special effects system	Y
23	Appeal for the procurement of XX City Recycling (Incineration) Construction and XX County, XX recycling (Incineration) Plant Construction	Y
26	Appeal on 5 procurement projects including YC89762P Mixer etc.	Y
28	Appeal for the procurement of 38 cases including mechanical screw	Y
29	Appeal for the procurement of polymer inhibitor	Y
35	Appeal on procurement for FN-89119PA78PE Granular Activated Carbon	Y
36	Appeal for the procurement of thermal underwear	Y
42	Appeal on procurement for XX pedestrian bridge construction	Y
52	Appeal for the procurement of office construction for XX power plant project	Y
58	Appeal for the procurement of 2002 funeral service for diseased single veterans	
59	Appeal for the procurement of 35 items including adapters	Y
61	Firefighting and rescue support software system outsourcing project	Y
66	Procurement of 520 aluminum foil, 270g/m ² 30.5" x 24.5"	Y
70	Appeal for the procurement of Central pipeline cleanup and maintenance project	Y

3.5. Discussion

The collected 72 appeal cases are shown in Table 1. In the table, 46 cases were appealed successfully, which account for 64% of the total cases. Of the 85 violations, 33 are in violation of Items 10 and 12 of Article 101. In terms of the number of cases, 30 of the 72 cases or 41.7% are against these violations. Eighteen of the 85 violations are committed against Item 7, where the supplier, without due cause, refuses to execute a contract after being awarded it. In terms of the number of cases, 15 of the 72 cases or 20.8% are in such a violation. Items 1 and 2 involve bid rigging, which take up 16 of the 85 total violations. In terms of the number of cases, 15 of the 72 cases or 15.2% are in such violation. The above 5 violations constitute 56 of the 72 cases or 77.7% as shown in Figure 2.

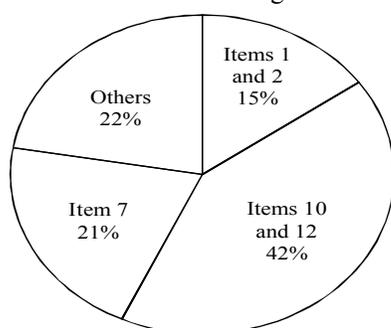


Figure 2. Dispute Pie Chart.

Each Item in Table 2 is also interrelated, such as where a contract is rescinded (Items 10 and 12) or terminated for causes attributable to the supplier and where the supplier refuses to execute a contract without due cause after being awarded it (Items 7 and 10). Items 1 and 2 are considered bid rigging. The act of allowing others to borrow or lending others its name or certificate involves both parties. Therefore, Items 1 and 2 are often the cause and effect of each other.

4. Amendment Suggestions

It is the government's responsibility to maintain fair competition, and a well-established legal system is what moves the nation forward. To make Article 101 of the GPA more concise and clear, recommended amendments on the publication of deficient suppliers are proposed as follows:

- Items 1, 2, and 4 could be combined into one. Those three items are intended for bid-rigging, forgery, and alteration of documents to inhibit price competition.
- Item 3, "where the supplier has substantially reduced the work or materials without obtaining prior approval", may include additional provisions on the responsibility of the project manager or the contractor. Reduction of work or materials may

pose a serious danger to the lives and property of the public. Therefore, it is recommended that Item 3 be revised to "where the supplier has substantially reduced the work or materials without obtaining prior approval, the project manager or contractor commissioned by the procuring entity may exercise the provision in this Item." The enforcement rules shall define serious offenses. For example, work or material reduction over a certain percentage of total procurement or over a certain amount may constitute a serious offense so that the entities may act swiftly and concisely. The inclusion of project managers and contractors also prevents human errors or deficiencies.

- Items 5 and 13 can be repealed from Article 101. Instead, related agencies that deal with such matters should follow the standard operational procedure and forward information related to the supplier to the website of the Public Construction Committee. Therefore, the procuring agency could look up the information online to confirm such information before signing the contract. In addition, the government is responsible for preventing suppliers that are shut down, going through bankruptcy proceedings, suspended after publication, or dissolved, from entering the market. Fair competition can thus be maintained.
- Item 9 is associated with contract execution and should be determined on a case by case basis. The bond should be increased so that the supplier would have to abide by the warranty responsibility. Such effect can be easily achieved through contractual terms. Therefore, this item is recommended for repeal from Article 101.
- Item 14 is considered a formality clause and therefore is recommended for repeal. Instead, the rights of women, aborigines, and personnel of the disadvantaged groups should be enhanced by increasing the hiring percentage. The threshold of hiring 2% of the above personnel should be decreased from 100 to 50 total employees, which is more practical and would increase employment opportunities for the disadvantaged.
- Article 58, i.e. the lowest bid, providing explanations to the suppliers while granting the procuring entity discretion is what is causing conflicts between quality and price. The overall economic loss caused by taking the lowest bid is mostly due to contradictions (Wang et al., 2006). The current practice of taking the lowest bid is the manifestation that procuring entities are diffident about the investigated base price. In addition to the regular deposit, this study recommends suppliers also submit a secure deposit with the tenders. If the tender price submitted by the supplier is lower than 70% of

the base price, the regular deposit is returned, but not the secure deposit, and said tender is disqualified. Such strategy has the following advantages: (1) Provide a retreat mechanism for suppliers that made an improper cost estimation. The secure deposit serves as a caution; (2) Protect the order of procurement and prevent suppliers from vicious bidding and lowering the quality of the procurement; (3) Not allowing suppliers who submit a tender price lower than 70% of the base price an opportunity to explain could defend the procuring entity's confidence in the lowest price.

The recommended changes to the Publication of Deficient Suppliers in the GPA are listed as follows:

1. where the supplier allows any others to borrow its business certificate to participate in a tender; borrows or assumes any other's business certificate; uses forged documents or documents with unauthorized alteration to tender, contract, or perform a contract; forges or alters documents without authorization to tender, contract, or perform a contract;
2. It is recommended that this item be combined with Item 1.
3. where the supplier has substantially reduced the

work or materials without obtaining a prior approval, the project manager and contractor commissioned by the procuring entity may enforce the terms in this regulation;

4. This item is recommended to be combined with Item 1.
5. This item is recommended to be repealed.
6. where the supplier has committed any of the offenses prescribed in Articles 87 to 92 hereof, and has been sentenced by a court of the first instance;
7. where the supplier refuses to execute a contract without due cause after being awarded it;
8. where an inspection indicates any serious non-conformity with contractual requirements;
9. This item is recommended to be repealed.
10. where the project is seriously delayed due to causes attributable to the supplier;
11. where the supplier is in breach of the Article 65 by subcontracting the awarded projects;
12. where a contract is rescinded or terminated for causes attributable to the supplier;
13. This item is recommended to be repealed.
14. This item is recommended to be repealed.

The recommended amendments to Article 101 are organized in Table 6.

Table 6. Comparisons between Existing Article 101 of the GPA and Recommended Amendments.

Existing Article 101	Recommended amendments	Justifications
1. The supplier allows any others to borrow its business certificate to participate in a tender.	The supplier allows any others to borrow its business certificate to participate in a tender; borrows or assumes any other's business certificate; uses forged documents or documents with unauthorized alteration to tender, contract, or perform a contract; forges or alters documents without authorization to tender, contract, or perform a contract.	1. Allow the entity to easily determine the supplier's violation; 2. Reduce the likelihood of the entity's citing wrong regulations; 3. Simplify the regulations.
2. The supplier borrows or assumes any other's business certificate or uses forged documents or documents with unauthorized alteration to tender, contract, or perform a contract.	This item is recommended to be combined with Item 1.	Allowing others to borrow the supplier's business certificate as well as forging and altering procurement related documents in Items 1, 2 and 4 are all interrelated. Therefore, it is recommended that they be combined into Item 1.
3. The supplier has substantially reduced the work or materials without obtaining prior approval.	The supplier has substantially reduced the work or materials without obtaining a prior approval, the project manager and contractor commissioned by the procuring entity may enforce the terms in this regulation.	Include the manager and supplier commissioned by the procuring entity to prevent human errors or deficiency.
4. The supplier forges or alters documents related to tendering, contracting, or contract performance without authorization.	This item is recommended to be combined with Item 1.	Allowing others to borrow the supplier's business certificate as well as forging and altering procurement related documents in Items 1, 2 and 4 are all interrelated. Therefore, it is recommended that they be combined into Item 1.
5. The supplier participates in tendering during the period when its business operation has been suspended by a disciplinary action.	This item is recommended to be repealed.	Redundant languages should be repealed.
6. The supplier has committed any of the offenses prescribed in Articles 87 to 92 hereof, and has been sentenced by a court of the first instance.	The supplier has committed any of the offenses prescribed in Articles 87 to 92 hereof, and has been sentenced by a court of the first instance.	(no changes)

7. The supplier refuses to execute a contract without due cause after it is awarded.	The supplier refuses to execute a contract without due cause after being awarded it.	(no changes)
8. An inspection indicates any serious non-conformity with contractual requirements.	An inspection indicates any serious non-conformity with contractual requirements.	(no changes)
9. The supplier does not fulfill its warranty obligation after the project is completed.	This item is recommended to be repealed.	Ensuring the warranty liability by increasing the bond.
10. The project is seriously delayed due to causes attributable to the supplier.	The project is seriously delayed due to causes attributable to the supplier.	(no changes)
11. The supplier is in breach of the Article 65 by subcontracting the awarded projects.	The supplier is in breach of the Article 65 by subcontracting the awarded projects.	(no changes)
12. A contract is rescinded or terminated for causes attributable to the supplier.	A contract is rescinded or terminated for causes attributable to the supplier.	(no changes)
13. The supplier is under the procedure of bankruptcy.	This item is recommended to be repealed.	Redundant languages should be repealed.
14. The supplier seriously discriminates against women, aborigines, or personnel of disadvantaged groups.	This item is recommended to be repealed.	Redundant languages should be repealed.

It is recommended that Article 101 of the GPA be amended as follows:

Where a procuring entity finds that a supplier is in any of the following circumstances, the entity shall notify the supplier of the facts and reasons related thereto, and indicate in the notification that it will be published on the Government Procurement Gazette if the supplier does not file a protest:

1. where the supplier allows any others to borrow its business certificate to participate in a tender; borrows or assumes any other's business certificate; uses forged documents or documents with unauthorized alteration to tender, contract, or perform a contract; forges or alters documents without authorization to tender, contract, or perform a contract;
2. where the supplier has substantially reduced the work or materials without obtaining a prior approval, the project manager and contractor commissioned by the procuring entity may enforce the terms in this regulation;
3. where the supplier has committed any of the offenses prescribed in Articles 87 to 92 hereof, and has been sentenced by a court of the first instance;
4. where the supplier refuses to execute a contract without due cause after being awarded it;
5. where an inspection indicates any serious non-conformity with contractual requirements;
6. where the project is seriously delayed due to causes attributable to the supplier;
7. where the supplier is in breach of the Article 65 by subcontracting the awarded projects; or
8. where a contract is rescinded or terminated for causes attributable to the supplier.

5. Conclusions

Each of the 72 cases in *Appeals in Government Procurement* is examined in this study to

outline the results of appeal. Using a case analysis approach, this study also explores the types of violations that constitute being deemed deficient suppliers so that suppliers can be aware of the particulars prior to submitting tenders to avoid unnecessary loss and reduce the risk of being suspended or labeled as deficient suppliers. If both the procuring entity and the supplier treat procurement matters seriously, once both parties have formulated their procurement and management strategies, unnecessary disputes may be avoided. As a result, the number of disputes can be reduced. The proposed research process and results could be helpful for countries dealing with government procurement, especially for those members in the World Trade Organization (WTO).

This study finds that common sources of procurement disputes are centered on certain stipulations in Article 101. As long as the procuring agency and the supplier can focus on these issues, most disputes can be avoided. Continued learning within the organization could improve procurement efficiency and keep the suppliers from unknowingly getting involved in unnecessary disputes. The procuring entity's understanding of the dispute roots and empathy could help greatly reduce the number of disputes during the procurement process. In this highly competitive environment, suppliers' understanding of the disputes could also improve business management and help them gain a competitive edge.

With recommended amendments, Article 101 could be reduced from the current 14 Items to 8 for the following reasons:

1. By integrating original Items 2 and 4 into Item 1, the procuring entity can easily determine the supplier's violations. Said Item is more clear and concise reducing the occurrence of wrongful

- citation;
2. Holding suppliers and managers commissioned by the procuring entity liable and including them in Item 3 can ensure fairness and prevent human errors.
 3. Deleting the redundant language keeps the regulations more concise.

The practice of taking the lowest bid in the GPA has often met with difficulties and caused inconvenience for the procuring entity. Even after several amendments by the Public Construction Committee, flaws in the process still exist. Future studies may continue such research and focus on the implementation of the entity's discretion to simplify the implementation procedure.

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