政府採購履約爭議處理機制
－以工程及技術服務採購「先調後仲」爲例

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關鍵詞：調解、仲裁、先調後仲、工程採購、技術服務
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摘　要

政府採購法前於2007年，復於2016年修正第85條之1第2項後段，明定工程及技術服務採購，採購申訴審議委員會應提出調解建議或調解方案；因機關不同意致調解不成立者，廠商提付仲裁，機關不得拒絕，此乃所謂「先調解後仲裁」（或稱強制仲裁）之機制，其修法主要目的係希望借重調解與仲裁之效率，使調解不成立之案件有進入仲裁之機會，俾利迅速解決履約爭議。雖然目前實務見解肯認之，惟仍有法理上合憲性爭議，本文將針對該機制對廠商與機關之影響及其因應進行說明；最後，提出對此機制在調解及仲裁上之實務影響及現有制度之改革建議。

Handling Mechanism of Government Purchasing Performance Dispute － Taking “First Mediation Later Arbitration” of Engineering and Technical Services Purchasing as an Example

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Abstract

Before the government procurement law was amended in 2007, the second paragraph of Article 85-1, paragraph 2, was amended in 2016. Procurement of construction projects and technical services should be submitted through the Procurement Complaints Review Committee for mediation or mediation. If the authorities do not agree to cause the mediation not to be established the manufacturer shall submit the arbitration and the agency shall not refuse. This is the mechanism of so-called "conciliation before arbitration" (or coercion). The main purpose of the amendment is to seek to take the power of mediation and arbitration into consideration so that cases where conciliation does not exist have the opportunity to enter arbitration in order to resolve the performance dispute. Although substantive opinions are affirmative at present, there are still constitutional disputes. This article will address the mechanism of the manufacturers and the impact of institutions and to explain. Finally, this article will put forward the substantive impact of the mechanism on mediation and arbitration and the reform proposals of the existing system.