

摘要

政府採購法 72 條第 2 項減價收受規定，可說是機關處理驗收之例外規定，關係機關採購後續使用情形及廠商權益甚鉅。本文以工程採購為研究對象，以工程採購著眼於工作之完成，來探討採購法驗收之法律效果，以釐清減價收受之效力。

依採購法 72 條第 2 項規定，明定減價收受之要件，包括驗收結果與規定不符、不妨礙安全及使用需求、通常效用或契約預定效用，經機關檢討不必拆換或拆換卻有困難、得於必要時，機關得採減價收受，因此機關驗收時，發現與規定不符，仍須滿足前開之要件，方得採減價收受，否則應依採購法 72 條第 1 項規定，請廠商限期改善。

從民法概念來看，減價收受無所謂過失責任，基本上肇因於廠商債務不履行，債務不履行可分為給付不能或不完全給付，二者區分實益在於給付是否可能，亦關係機關評估是否辦理減價收受及後續損害賠償問題。此外，減價收受亦關係工程承攬契約之瑕疵擔保責任與保固責任，以及減價收受之額度與違約金等相關問題。本論文希望藉由理論探討，及法院判決、調解建議及仲裁等相關實務案例，以釐清減價收受所遭遇之相關問題。

關鍵字：政府採購法第 72 條第 2 項、減價收受、工程採購、驗收、債務不履行、承攬契約之瑕疵擔保責任、保固責任、違約金

Abstract

The acceptance with price-reduction under Article 72, paragraph 2 of the “Government Procurement Act”, could be said an exceptional part of the inspection and acceptance under the Act. It is regulated to the interests and duties between the two parties of governmental purchasement. This study intentionally analyzes the “construction work”, which is used to focus on the completeness of definit work and to cope with the contract requirements. When it happens to be accepted with price reduction, what is the reason and what will be going on?

According to the Article 72, paragraph 2 of the “Government Procurement Act”, where the result of inspection indicates any non-conformity with the contractual requirements, but the non-conformity neither hinders the safety or use required nor decreases the general function or the function designated by the contract, an acceptance with price-reduction may be conducted under conditions that the entity has determined that there is no need or it is difficult to make replacement. Otherwise, the entity should require the suppliers make improvement within a time-limit according to the paragraph 1 of Article 72.

Based on the concepts of the Civil Code, the acceptance with the price-reduction does not depend on responsibility for intentional or gross negligent acts. It is caused by the suppliers’ non-performance, when the performance becomes impossible or incomplete. The governmental entity will also transfer to claim compensation for the injury. This issue also involves the obligation of suppliers to repair the defects within the specified period, not only after the inspection and acceptance. The reasonable amount of price-reduction and the penalties are also important to be discussed. This study wants to clarify all the issues and the effects of the acceptance with price-reduction through the theory discussion and the reviewing of juridical cases, mediations and arbitrations.

Keywords : Article 72, paragraph 2 of the “Government Procurement Act”, the acceptance with price-reduction, construction work, the inspection and acceptance, the suppliers’ non-performance, the obligation of suppliers to repair the defects within the specified period, penalty.