



拓展海外市場 工程英語

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大綱

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- ◆英語契約結構概述
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國際採購實務英語

法律規範

- ◆政府採購法 Government Procurement Act
- ◆WTO政府採購協定 Agreement on Government Procurement of the WTO

政府採購法第2條

Article 2 of the Government Procurement Act

The term "**procurement**" as used in this Act shall refer to the contracting of construction work, the purchase or lease of property, the retention or employment of services, etc.

政府採購法第7條第1項

Article 7 Paragraph 1 of the Government Procurement Act

The term "**construction work**" referred to in this Act means the **activities performed above or underneath the ground** for building, augmenting, altering, repairing, or dismantling structures and their respective auxiliary equipment/facilities, or reforming natural environment, including architectural, civil, hydraulic, environmental, transportation, mechanical, electrical, and chemical construction works and others as determined by the responsible entity.

政府採購法第18條第1項

Article 18 Paragraph 1 of the Government Procurement Act

The tendering procedures for procurement include **open tendering procedures, selective tendering procedures, and limited tendering procedures.**

WTO GPA

Article 1 Subparagraph (h)

limited tendering means a procurement method whereby the **procuring entity** contacts a supplier or suppliers of its choice;

WTO GPA

Article 1 Subparagraph (m)

open tendering means a procurement method whereby all interested suppliers may submit a tender

WTO GPA

Article 1 Subparagraph (q)

selective tendering means a procurement method whereby only **qualified suppliers** are invited by the procuring entity to submit a tender

工程標案實務英語

標案相關

招標 Invitation to Tender	投標 Tender	決標 Award of Contract	履約 Performance
• 招標公告 Tender Notice / Tender Announcement • 招標文件 Tender Documentation / Bidding Documents • 規格 Specifications • 政府底價 Government Estimate	• 投標須知 Instructions to Tenderers • 合格廠商 Qualified Supplier • 外國廠商 Foreign Supplier	• 審標 Evaluation • 決標公告 Publication of Tender Awarding • 採購契約 Procurement Contract • 工程契約 Construction Contract	• 驗收 Acceptance • 工程結算驗收證明書 Certificate of Settlement and Acceptance for Construction Work • 履約管理 Management of Performance

WTO GPA

Article I Subparagraph (k)

notice of intended procurement means a notice published by a procuring entity inviting interested suppliers to submit a request for participation, a tender, or both;

WTO GPA

Article VII Paragraph 3

For each case of intended procurement, a procuring entity shall publish a **summary notice** that is readily accessible, **at the same time** as the publication of the notice of intended procurement, in one of the WTO languages. The summary notice shall contain at least the following information:

- (a) the **subject-matter** of the procurement;
- (b) the **final date** for the submission of tenders or, where applicable, any final date for the submission of requests for participation in the procurement or for inclusion on a multi-use list; and
- (c) the **address** from which documents relating to the procurement may be requested.



資金相關

- 採購金額 Procurement Value
- 押標金 Bid Bond
- 保證金 Guarantee Bond
- 履約保證金 Performance Bond
- 保固保證金 Warranty Bond
- 預付款還款保證金 Refund Bond



決標相關

- 比價 Price Competition
- 議價 Price Negotiation
- 最具經濟優勢標 Most Economically Advantageous Tender (MEAT)
- 最低標 The Lowest Tender
- 最有利標 The Most Advantageous Tender

MEAT

Scottish Procurement and Property Directorate (2018)

"Most economically advantageous tender".

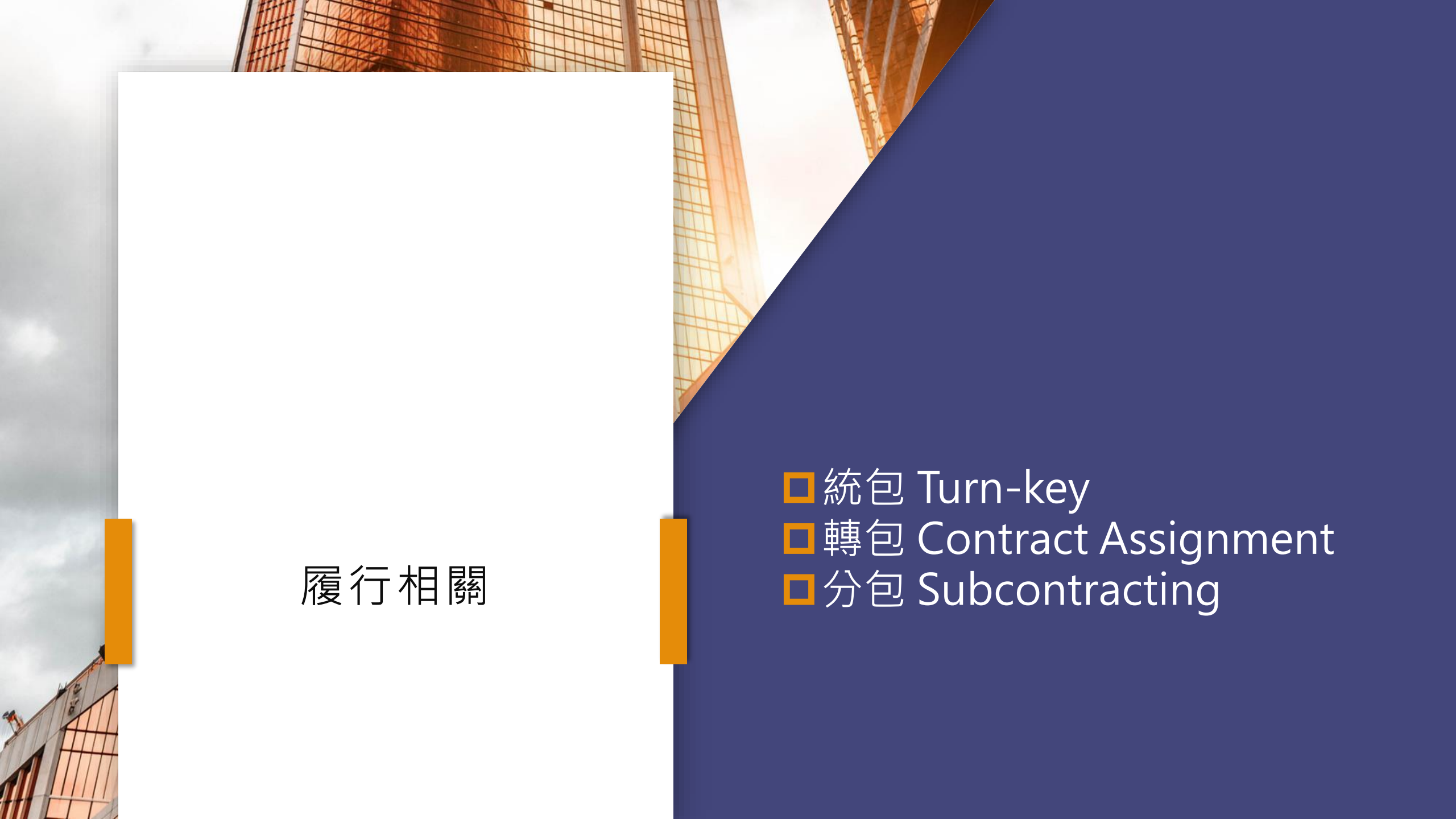
All awards of contracts should be made on this basis, it requires that the **evaluation** takes account of the **quality and price** of the tender against the requirement and not just the price or the quality.

政府採購法第52條第1項

Article 52 Paragraph 1 of the Government Procurement Act

The award of contract conducted by an entity shall follow one of the following principles and the principle adopted shall be specified in the tender documentation:

1. 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;
2. 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 also is the lowest tender within the budget amount shall be the winning tenderer;
3. the tenderer whose tender meets the requirements set forth in the tender documentation and is the **most advantageous one** shall be the winning tenderer; or
4. to adopt **multiple award**. An entity may prescribe in the tender documentation that contracts may be awarded to different tenderers by different items or different quantities, but the spirit of competition as to the lowest price or the most advantageous tender shall be respected.



履行相關

- 統包 Turn-key
- 轉包 Contract Assignment
- 分包 Subcontracting

政府採購法第24條第2項

Article 24 Paragraph 2 of the Government Procurement Act

The term "**turn-key**" referred to in the preceding paragraph means the procurement of construction work or property by **consolidating** the procurement of design and work, supply, installation, or maintenance within a certain period, etc. into a contract for tendering.

英語契約結構概述

常見契約類型

- ◆ 合作備忘錄 Memorandum of Understanding (MoU)
- ◆ 保密契約 Non-Disclosure Agreement (NDA)
- ◆ 顧問或諮詢契約 Consulting Agreement
- ◆ 買賣契約 Sale and Purchase Agreement
- ◆ 採購契約 Procurement Agreement
- ◆ Etc.



MoU & Contract

- 内容 Content
- 拘束力 Binding force

契約結構

標題 Title

前言 Preamble

定義 Definition

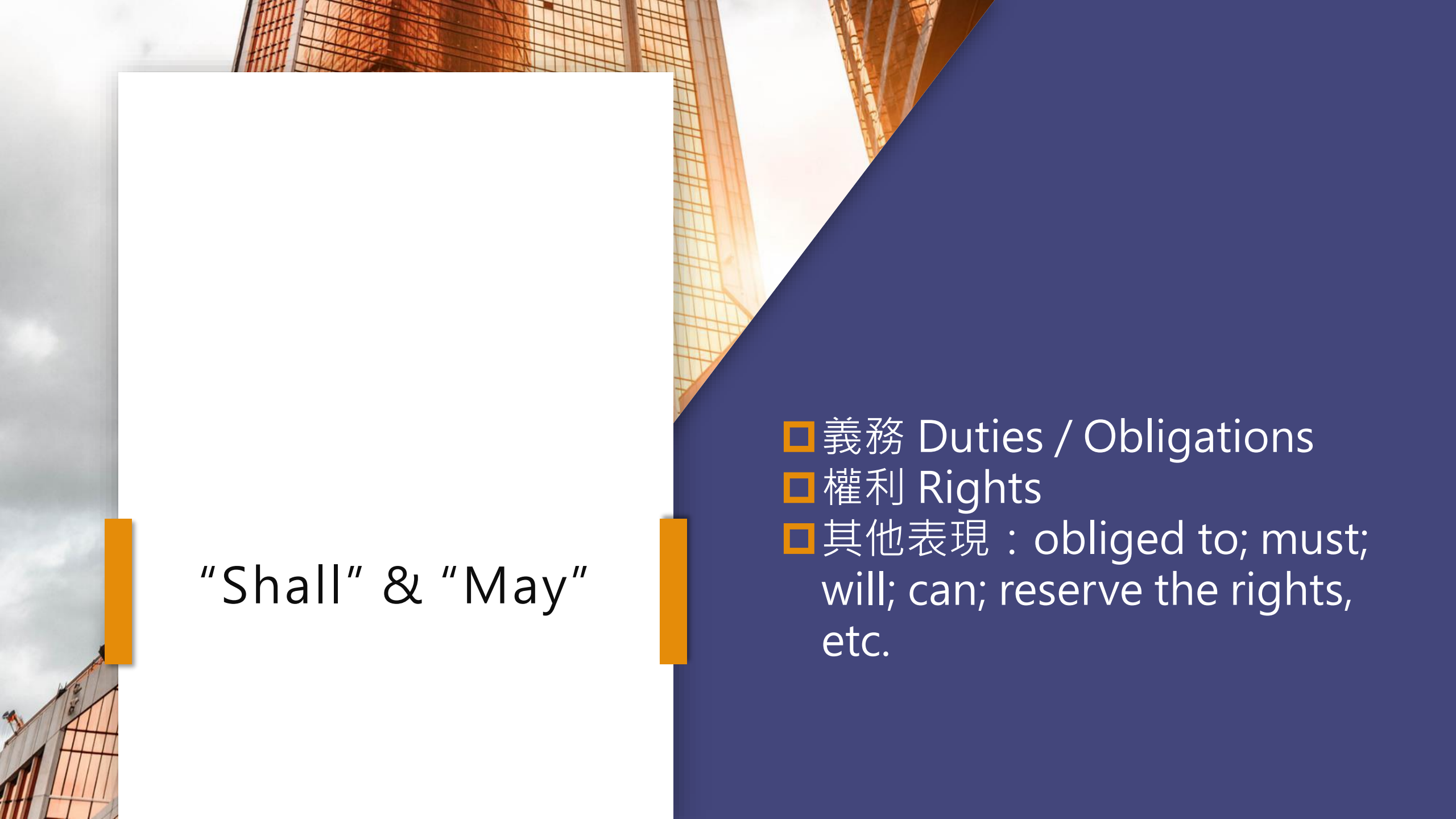
主要條款 Subject Matter

其他條款 Miscellaneous

簽名 Signature

附件 Annex / Appendix

常見契約條款解析



"Shall" & "May"

- 義務 Duties / Obligations
- 權利 Rights
- 其他表現 : obliged to; must; will; can; reserve the rights, etc.

主要事項

- ◆ 雙方義務 Obligations of the Parties
- ◆ 對價 Consideration
- ◆ 契約期間 Term of Agreement
- ◆ 聲明與擔保 Representations and Warranties

Consideration

SAMPLE

The Contractor will be paid at the rate of _____ for performing the duties set forth above. Total remuneration under this Contract shall not exceed \$ _____.

Term of Agreement

SAMPLE

This Agreement becomes effective upon **the date of the last signature** below ("**Effective Date**") and shall remain in effect until the completion of all obligations of both Parties hereto, or five years from the Effective Date, whichever comes first.

契約效力

- ◆ 期滿前終止 Termination Prior to Expiration
- ◆ 違約救濟 Remedies
- ◆ 不可抗力 Force Majeure

Termination Prior to Expiration

SAMPLE

Either party may terminate this Agreement at any time, with or without cause, upon thirty (30) days' written notice to the other party. Upon receipt of the notice of termination, the Contractor shall immediately cease all work or services hereunder except as may be specifically approved by the City, Contractor shall be entitled to compensation for all services rendered prior to the effectiveness of the notice of termination and for such additional services specifically authorized by the Contractor Officer and City shall be entitled to reimbursement for any compensation paid in excess of the services rendered.

Remedies

SAMPLE

Each of the parties to this Agreement will be entitled to enforce its rights under this Agreement specifically, to **recover damages and costs (including attorney's fees)** caused by any breach of any provision of this Agreement and to exercise all other rights existing in its favor. The parties hereto agree and acknowledge that **money damages may not be an adequate remedy** for any breach of the provisions of this Agreement and that any party may in its sole discretion apply to any court of law or equity of competent jurisdiction (without posting any bond or deposit) for **specific performance and/or other injunctive relief** in order to enforce or prevent any violations of the provisions of this Agreement.

Force Majeure

SAMPLE

Contractor shall not be assessed with **liquidated damages** or **unsatisfactory performance penalties** during any delay beyond the time named for the performance of this Contract caused by **any act of God, war, civil disorder, employment strike or other cause beyond its reasonable control**, provided Contractor gives **written notice** of the cause of the delay to County within 36 hours of the start of the delay and Contractor **avails himself of any available remedies**.

保密條款

- ◆機密資訊的定義 Definition of Confidential Information
- ◆機密資訊的例外 Exception of Confidential Information
- ◆強制揭露 Compulsory Disclosure

CONFIDENTIALITY

SAMPLE

The Parties acknowledge that the existence and the terms of this Agreement and any oral or written information exchanged between the Parties in connection with the preparation and performance this Agreement **are regarded as confidential information**. Each Party shall maintain confidentiality of all such confidential information, and without obtaining the **written consent** of the other Party, it shall not disclose any relevant confidential information to any third parties, **except for the information that:** (a) is or will be in the public domain (other than through the receiving Party's unauthorized disclosure); (b) is under the obligation to be disclosed pursuant to the applicable laws or regulations, rules of any stock exchange, or orders of the court or other government authorities; or (c) is required to be disclosed by any Party to its shareholders, investors, legal counsels or financial advisors regarding the transaction contemplated hereunder, provided that such shareholders, investors, legal counsels or financial advisors shall be bound by the confidentiality obligations similar to those set forth in this Section. Disclosure of any confidential information by the staff members or agencies hired by any Party **shall be deemed** disclosure of such confidential information by such Party, which Party shall be held liable for breach of this Agreement. **This Section shall survive the termination of this Agreement for any reason.**

其他條款

- ◆ 通知 Notice
- ◆ 契約修正 Amendment
- ◆ 效力分割條款 Severability
- ◆ 完整合意條款 Entire Agreement

Severability

SAMPLE

If any **provision** of this agreement is held, in whole or in part, to be **unenforceable** for any reason, the remainder of that provision and of the entire agreement shall be **severable** and **remain in effect**.

Entire Agreement

SAMPLE

This Agreement constitutes **the entire agreement** between the parties with respect to the **subject matter** hereof and **supersedes** all other prior agreements and understandings, both **written and oral**, between the parties with respect to the subject matter hereof.

爭端解決條款

- ◆ 準據法 Governing Law
- ◆ 爭端解決機制 Dispute Resolution Mechanism
- ◆ 替代性爭端解決機制 Alternative Dispute Resolution (ADR) Mechanism
- ◆ 管轄 Jurisdiction

Arbitration

SAMPLE

Any **dispute, controversy or claim** (each, a "Dispute") arising out of or relating to this Agreement, or the interpretation, breach, termination, validity or invalidity thereof, shall be referred to arbitration upon the demand of either party to the dispute with notice (the "Arbitration Notice") to the other. The Dispute shall be settled by arbitration in Hong Kong by the Hong Kong International Arbitration Centre (the "HKIAC") in accordance with the Hong Kong International Arbitration Centre Administered Arbitration Rules (the "HKIAC Rules") in force at the time when the Arbitration Notice is submitted. The seat of arbitration shall be Hong Kong. There shall be three (3) arbitrators.

謝謝