

Reference Material III - 5

Answers to Opinions and Requests about the Voluntary Measures on Government Procurement

The Japanese government has listened to suppliers' opinions and requests about our voluntary measures on government procurement by conducting a questionnaire survey every year. On this website, among the opinions and requests gathered by the survey in 2001 and 2002, we pick up those from many respondents, considered important to improve the current measures, and considered necessary information to the public, and release our answers to them.

- There was a case in which the period for the receipt of tenders for procurement was too short for bidding. We would like to have a margin of time to bid.

Response from the Government of Japan

Under rules including the WTO Agreement on Government Procurement (GPA), a procuring entity publishes a notice for the invitation to tender at least 40 days in advance of the closing date of receipt for tenders for procurement of products and services valued at above 100,000 SDR (16 million yen between 1 April 2006 and 31 March 2008). As a voluntary measure, the Government of Japan extends the period to 50 days, unless there are exceptional circumstances. If you have any questions concerning a specific case or the period for receipt of tenders, please feel free to get in touch with the designated contact point.

- There was a specification which was considered to be advantageous to a particular enterprise. It is to be hoped that specifications will be examined and remedied strictly in the light of fairness.

Response from the Government of Japan

Under the WTO Agreement on Government Procurement (GPA), technical specifications shall not be adopted with the effect of creating unnecessary obstacles to international trade. Voluntary measures taken by procuring sectors in regard to the Action Program also stipulate that technical specifications should be made in an impartial manner. Any supplier can file a complaint about technical specifications that are considered to be in violation of these rules.

In such a case, the supplier is recommended to first confer with the procuring entity and to reach a settlement. If you have any other questions about the system, feel free to contact the Office for Government Procurement Challenge System at the Cabinet Office (Tel: 03-3581-0262).

- It is hoped that improvements are made to the “Database on Government Procurement Case Examples Concerning Information Systems,” such as increasing information disclosure, for it is still such that little information is being disclosed.

Response from the Government of Japan

Ministries and agencies have been disclosing procurement case examples since April 2004 through the “Database on Government Procurement Case Examples Concerning Information Systems.”

The government is currently endeavoring to increase the types of information that is disclosed in the database to include, in addition to information on notices in official gazettes, the target price, the names of bidders and bidding prices for competitive tenders, and the technical merits of the Overall-Greatest-Value Evaluation method (OGV).

As of December 2005, approximately 1,300 procurement case examples have been registered in the database. The government will continue to promote the registration of procurement case examples through the forum of the Liaison Conference of Ministries Concerning Government Procurement (Secretariat: Ministry of Internal Affairs and Communications; Ministry of Finance; Ministry of Economy, Trade and Industry), which promotes the use of the database.

- Although the “Memorandum of Agreement on Government Procurement for Information Systems” is appropriate content-wise, I have the sense that the items listed in the memorandum are, in actuality, not being implemented properly. I would like to ask the ministries and agencies to implement these more rigorously.

Response from the Government of Japan

Every year the ministries and agencies conduct a follow-up study on the progress of the items to be undertaken as listed in the “Memorandum of Agreement on Government Procurement for Information Systems” (approved by the Liaison Conference of Ministries Concerning Government Procurement in March 2002 [revised in April 2002, March 2003, and March 2004]), with a view to ensuring its effectiveness.

The results of the follow-up studies are disclosed to the public and are shared between the ministries and agencies through the forum of the Liaison Conference of Ministries Concerning Government Procurement (Secretariat: Ministry of Internal Affairs and Communications; Ministry of Finance; Ministry of Economy, Trade and Industry), which promotes these efforts. Through these measures the government will continue to promote the rigorous implementation of the items in the memorandum by the ministries and agencies.

- In the Overall-Greatest-Value Evaluation method (OGV) for procurement of information systems, technical merits and price merits are evaluated on a 1:1 ratio. Can the evaluation be more reasonable if the share of technical merits is raised?

Response from the Government of Japan

To procure high-quality information systems at a reasonable rate, a new evaluation method entered into force on August 1, 2002. This new method evaluates tenders by adding up technical and pricing points calculated on the tender price, when an information system is procured using the Overall-Greatest-Value Evaluation method. Given that the weighting of the technical points in the whole evaluation remain unchanged regardless of price, we consider that full application of this evaluation method can be an effective countermeasure against ultra-low-price bids.

Total procurement items through this evaluation method were 119 in FY2002, FY2003, and FY2004. With an eye to adopting this evaluation on a wider basis in the future, where necessary, we will examine improved methods of evaluation.

- For procurement of information systems, to clarify the sharing of responsibility between public and private, I hope to use a contract document which clearly place limits on the coverage of compensation for damage.

Response from the Government of Japan

The Government of Japan will clarify the liability for damage in appropriate cases by placing limits on the coverage of compensation for damage in the contract document. In FY2004, 5 ministries introduced the contract document which clarified the liability for damage in a total of

13 cases. We will make efforts to clarify the sharing of responsibility between public and private entities through a follow-up survey to identify the degree to which each procuring entity shares the responsibility in the contract document.

The specific coverage of the liability is determined by taking into consideration the content of services, or the extent of prospective damage and impact on people's lives incurred by malfunction of the information systems. As it is difficult to designate specific coverage on a uniform basis, each procuring entity determines it on a case-by-case basis.

- I call for the early implementation of “legislating attribution of intellectual property to bailee or contractor in software development for government.”

Response from the Government of Japan

The content of the request is also identified in the Intellectual Property Strategic Program formulated by the Intellectual Property Policy Headquarters, and the submission of a related bill to the Diet is currently in consideration.

- Regarding the use of the system of complaint reviews, I am concerned about the demerits of raising an objection. Furthermore, I have doubts about the fruits that could be obtained by raising an objection and about its fairness.

Response from the Government of Japan

At the core of the system for reviewing complaints concerning government procurement are two entities, the Office of Government Procurement Review (OGPR) (hereinafter referred to as “the Office”), chaired by the Chief Cabinet Secretary, and the Government Procurement Review Board (hereinafter referred to as “the Board”), which receives and reviews the actual complaints.

The Board consists of experts appointed by the chairperson, and reviews complaints from an impartial and independent standpoint in line with the review procedures for complaints prescribed by the Office. The system is designed so that any member with a vested interest in a complaint may not participate in the complaint review procedures.

In cases where a complaint is accepted by the Board, it will be disclosed in official gazettes and other sources pursuant to the provisions in “The Method of Public Announcement when a Complaint is Filed” (decision by the Chairperson of the Board). In disclosing this information,

it is possible to withhold the name of the complainant.

In cases where it is recognized that the measures stipulated in the WTO Agreement on Government Procurement (GPA) and other agreements for the accepted complaints are not being implemented, the Board will propose corrective measures which entail newly carrying out procurement procedures. In principle the procuring entity will abide by the proposal made by the Board concerning the complaints.