

## Reference Material III - 5

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

- It is difficult to locate the list related to government procurement on the websites. Please improve the arrangement.

#### Response from the Government of Japan

In response to opinions including this one, the Government has been changing the layouts of its webpages, in order to provide the Japanese people with clear and accurate information on government procurement. The Government will further strive to create webpages that are more user friendly.

Should you have any difficulties of the kind indicated above while referring to the Government websites, please do not hesitate to get in touch via relevant contact points.

- It appears that the Annual Report does not cover all procurement contracts of each relevant agency.

#### Response from the Government of Japan

The procurement contracts featured are only those that satisfy the following criteria and fall into any of the following measures: the Voluntary Measures on Government Procurement is applicable to contracts of goods and services worth SDR 100,000 or more (note) and subject to measures including the Procedures for Government Procurement on Products (Operational Guidelines); Measures on Japanese Public Sector Procurement of Telecommunications Products and Services; the independent measure about government procurement "About the government procurement procedure (employment indicator) concerning goods"; and Measures related to Japanese Public Sector Procurement of Medical Technology Products and Services.

(Note)

For the period from April 1, 2004 to March 31, 2008: SDR100,000 (16 million yen)

For the period from April 1, 2008 to March 31, 2010: SDR100,000 (17 million yen)

- Technical specifications advantageous to particular enterprises were prescribed, such as those which laid down functions that are exclusive to particular enterprises.

#### Response from the Government of Japan

Under the WTO Agreement on Government Procurement (GPA), a procuring entity shall not adopt technical specifications with the effect of creating unnecessary obstacles to international trade. The voluntary measures for each procurement sector in regard to the Action Program also stipulate that technical specifications should be made in an impartial manner. A supplier can file a complaint if it deems that the technical specifications are 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).

- Since there is a tendency for tenders to result in excessive competition, it is requested that consideration be made to setting a minimum value for the winning bid.

#### Response from the Government of Japan

For reasons such as conflict with the WTO Agreement on Government Procurement (GPA) and in light of the basic principle of the Accounting Law calling for the efficient enforcement of the budget, it is difficult to introduce a system in Japan that would establish a minimum limit on prices and thereby eliminate offers which are below a certain price. We will take steps to eliminate mala fide and dishonest businesses, in such ways as establishing appropriate tender eligibility qualifications and using the low bid review system and the Overall-Greatest-Value Evaluation method.

●Concerning the procurement of information systems, there appears to be a tendency of a de facto monopoly in the field of information technologies, in cases in which the scale of any given order is excessively huge, or when the systems subject to the procurement are based on years-long accumulation of relevant know-how or specific technologies.

#### Response from the Government of Japan

The Government has formulated a "Basic Guideline for the Government Procurement concerning Information Systems" (approved on March 1, 2007 by the CIO Liaison Committee of each Ministry and Agency) (hereinafter the "Procurement Guideline").

Pursuant to the Procurement Guideline, the Government will from now on promote free and fair competition in service markets to realize a truly competitive environment. In particular, the Government will: (1) avoid lump-sum procurement for large-scale projects and instead promote divided procurement in which a project is divided into adequate scales; (2) avoid monopoly of successful biddings by those entities that have accumulated knowledge about the details of relevant operations, and instead arrange such procurement specifications that feature all information indispensable for the assumption of proposed projects; and (3) avoid the use of specific technologies developed by specific entities, and instead promote the use of procurement specifications that are based on open standards such as international standards and the Japanese Industrial Standards.

●Concerning the procurement of information systems, excessively abstracted and neutralized specifications could risk causing ambiguity and confusion as to what are "essential" among the descriptions of such specifications. Furthermore, such procurements should cover standards of the United States, EU, etc., in addition to domestic ones.

#### Response from the Government of Japan

In order to improve the situation that could work advantageously for those entities having extensive information concerning the operation in question, the Procurement Guideline calls for the creation of procurement specifications that feature all information indispensable for proposing project plans and avoid any ambiguous requirements.

In addition, in order to avoid the dependence on specific technologies provided by specific entities, the descriptions of procurement specifications should be made without the use of specific proprietary names etc. and instead be based on open standards applicable not only in Japan but also internationally.

- Regarding the procurement of information systems, is it not better to prohibit bundled procurement inclusive of hardware and software development as well as their operations and instead use an unbundled approach in which orders are placed with vendors that specialize in them?

#### Response from the Government of Japan

In order to improve the situation in which bundled procurement could allow the entries by only large-scale business entities and thereby reinforce the independence on specific entities and block new entries by others, the following measures are established in principle for information systems that require a total of 500 million yen or more for design and development: (1) procurement upon the break-down of the design/development process into suitable scales; (2) procurement upon the separation of hardware and software; and (3) procurement upon the separation of the operation and maintenance processes.

Furthermore, from the perspective of expanding the participating opportunities for companies having technical capabilities, it is designated that measures should be taken to enhance the flexibility concerning the qualifications to participate in biddings and to open opportunities for consortiums (joint ventures) to participate in biddings.

- Since the responsibility of suppliers regarding compensation for damage is not clearly laid out for the procurement of information systems, are suppliers not at a severe disadvantage?

#### Response from the Government of Japan

Concerning the scope of responsibilities to be borne by suppliers, the Procurement Guideline refers to possible consequences to be expected in each service category, in cases in which information systems fail to function normally, in terms of the degree of expected damage and possible impact on the living of the people. Based upon such possibilities, the Procurement

Guideline provides that, when deemed adequate, relevant contracts should clearly specify provisions concerning compensation for damage by means such as establishing the limits of the scope of responsibilities.