

## Reference Material III - 5

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

- Since the searching system of the government procurement websites is not convenient to use, it takes a long time to locate a particular item. Please improve the system.

#### Answer

Responding to the similar opinions of the past, the Government of Japan has been improving the websites including changing its layouts, in order to provide clear and accessible information on government procurement. We will make further efforts to improve the websites so that they will become more user friendly.

If you have any questions about individual procurement projects, please do not hesitate to contact with relevant authorities.

- We need sufficient tender period and information from the Government in order to decide whether to make a bid or not.

#### Answer

Pursuant to the rules on government procurement, open tenders for procurement of goods, etc., estimated to be of value of more than 100,000 SDR (17 million yen from April 1, 2008 to March 31, 2010) must allocate a bidding period of more than 40 days from the date of public notice for invitation to tender. Furthermore, as a voluntary measure, the Government of Japan has extended the bidding period to more than 50 days unless there is any special circumstance. The average bidding period in 2007 is 68.7 days.

If you have any question about individual procurement projects, you may make comments using RFI or Request of Opinions on Specification Draft offered before a tender. Please feel free also to contact the procurement staff named in the specification during the bidding period.

• There were cases in which certain technical specifications were advantageous to particular enterprises. For example, there was a specification that required the function provided only by a particular manufacturer.

Answer

Under the WTO Agreement on Government Procurement (GPA), a procuring entity shall not adopt any technical specifications that have the effect of creating unnecessary obstacles to international trade. The Action Program, which specifies actions to take in each sector, also stipulates that technical specifications should be made in an impartial manner.

A supplier can file a complaint if it deems that the particular technical specification is 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 such as conditions and procedures for filing a claim, please feel free to contact the Office for Government Procurement Challenge System, the Cabinet Office (Tel: 03-3581-9044).

• Since open tenders tend to result in excessive competition, it is requested to consider setting a minimum value for the winning bid.

Answer

For reasons such as conflict with the WTO Agreement on Government Procurement (GPA) and in light of the basic principle of the Accounting Law, which calls for the efficient implementation of the budget, it is difficult to introduce the system that would establish a minimum limit on prices and thereby eliminate all 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 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, when the scale of any given order is excessively huge, or when the procurement is based on a years-long accumulation of relevant know-how or specific technologies.

Answer

The Government of Japan 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 of Japan will promote free and fair competition in service markets and realize a truly competitive environment. In particular, the Government will: (1) avoid procuring as a package for large-scale projects and instead promote a divided procurement in which a project is divided into appropriate scales; (2) avoid a monopoly by those entities that have accumulated knowledge about the details of relevant operations, and instead arrange procurement specifications to cover all information which is 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 widely accepted standards such as international standards and the Japanese Industrial Standards.

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

Answer

In order to avoid the situation that could work advantageously for those entities having extensive background information, the Procurement Guideline calls for the creation of procurement specifications that cover all information which is 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.

●A divided procurement is recommended for the procurement of information systems, but there is a risk that a mismatch between divided systems holds up the overall system. It is also possible that a need to coordinate among the vendors could cause a delay in the procurement schedule. The merits of a divided procurement should therefore be judged from the nature of the system such as required quality, cost and deadline, etc.

#### Answer

Regarding the procurement of information systems, there is a concern that ordering as a package may virtually limit market opportunities to major providers and intensify the dependence on certain providers, thus excluding other providers. To address this problem, it is stipulated that a large-scale system which costs more than 500 million yen to build or develop should in principle be subject to a divided procurement.

However, it would be more efficient to avoid a divided procurement, when it seems especially risky or can cause significant cost increases or unacceptable delays. In such cases, the merits of a divided procurement would be judged from the nature of the system or content to be built or developed.

●Regarding the procurement of information systems, certain additional works that go beyond the scope of the initial proposal are sometimes requested after the launching of the project. While the proposals and bidding were made based on the specification given by the Government, when there is a change to the scope of the project after launching, the provider should be given an opportunity to consult with the Government on an equal basis as equal parties of the contract.

#### Answer

An arbitrary change to the specification beyond the scope of the contract may inhibit fair

communication between the Government and providers, and may also affect the risk management regarding delivery and quality. Such laxity may also discourage potential new providers from participating.

Therefore, regarding the procurement of information systems, instructions to the providers should be given in accordance with what is stipulated in the contract. An appropriate and fair contract should be concluded promptly as soon as the winning bidder is decided based on that assumption. The procedure for making a change to the specification after signing the contract should be clearly stipulated in the contract.