

## Operational Guideline on Procedures for Government Procurement

Based on the Agreement amended by the Protocol Amending the Agreement on Government Procurement done at Geneva on 30 March 2012 (hereinafter referred to as the "revised Agreement") and other international agreements, efforts have been made to ensure that transparency, fairness and competitive procedures are taken in Japanese government procurement; however, in order to contribute to suppliers' convenience, to ensure market entry opportunities for competitive domestic and foreign suppliers, and to enhance transparency, fairness and competition in procurement procedures, the Government of Japan has decided to take necessary steps in keeping with the following operational guidelines for procurement of products covered under the revised Agreement and other international agreements and for procurement carried out in accordance with the agreements.

### I. Scope of Application

- (1) This operational guideline shall be applied to procurement contracts covered by the revised Agreement of a value of no less than 100,000 SDR that are entered into by those entities listed in Annex 1 and 3 of Government of Japan in Appendix I of the revised Agreement (hereafter referred to as the "procuring entities") (excluding construction services and services for construction, and engineering services and other technical services that are subject to the application of the revised Agreement).
- (2) In the event that special procedures and/or measures have been introduced for specific sectors, these special procedures and measures will be applied, without regard to the measures outlined within this operational guideline. As long as they do not contravene such special procedures or measures, the measures outlined within this operational guideline shall be implemented, and the detailed range of their application shall be as detailed in the Attachments.
- (3) Even for procurement under 100,000 SDR, the procuring entities will make efforts to ensure transparency, fairness and competitiveness, and will seek to reduce the use of single tendering procedures. For this purpose, efforts will be made to assist domestic and foreign suppliers by promptly and accurately responding to inquiries, through establishing a more effective structure to smoothly respond to requests for information and consultations concerning procurement.

### II. Basic Outlook on Market Research

- (1) When conducting market research to gather information regarding the development of

specifications as well as the market value of the scheduled procurement, for smooth implementation of that procurement, the procuring entities will request information from domestic and foreign suppliers ensuring fairness and non-discrimination.

- (2) Furthermore, the procuring entities will not allow suppliers who were directly involved in the development of specifications to participate in tendering procedures unless fairness and non-discrimination are ensured.

### III. Request for Submission of Materials and Comments for the Procuring Entities' Market Research

In procurement which is no less than 800,000 SDR, and for which the development of appropriate specifications is difficult for the procuring entities without requesting the submission of materials from suppliers, the following measures will be taken at the beginning of the fiscal year, or at the earliest possible time before the beginning of the fiscal year, except in cases of urgency or in cases of limited tendering in conformity with the 1994 Agreement.

- (1) The procuring entities will publish a notification in Kanpo (the official Government gazette) of their request for the materials and other necessary information on basic requirements for scheduled procurement, and will provide copies of the notification to suppliers upon request.

- (2) Notifications in Kanpo will clarify the following:

- a. Entity's name and its address
- b. Subject matter of procurement (name, volume and basic requirement for procurement)
- c. Deadline for the submission of material
- d. Notice of any conferences scheduled to be held

- (3) Except in cases of urgency, the deadline for submission of material outlined in 3., above, should be set at least 30 days after the day following publication of the request for submission of materials.

### IV. Request for Comments to Ensure Smooth Procurement

For smooth implementation of procurement valued no less than 800,000 SDR, the procuring entities should take the following measures to ensure that interested suppliers will be able to submit their comments on draft specifications prepared by the procuring entities, except in exceptional cases of urgency, cases of procurement related to raw materials, fuels, or other similar materials, or cases of high-volume purchases of

off-the-shelf products with unit costs not more than 500 SDR, or cases of repeated use of the existing specifications is required for the continuity of administrative service, or cases of limited tendering in conformity with the 1994 Agreement. When repeated use of the existing specifications is necessary for the continuity of administrative service, each ministry or agency should explain its specific reasons in its explanation of the subject matter of the procurement, at a seminar in the beginning of the fiscal year.

- (i) The procuring entities should publish notification in Kanpo that the development of draft specifications has been completed, at least 30 days before the scheduled public Notice of Procurement. When necessary to supplement this, letters which solicit comments will be sent to suppliers who have submitted materials and other matters in response to III., above; however, in exceptional cases of urgency, the above-mentioned period may be shortened to the extent that suppliers will be able to respond. In case of urgency that cannot be dealt with by shortening the period of time, the procedures outlined in IV.(i) through IV.(iv) may be omitted, however, it shall be clearly stated in the Notice of Procurement.
- (ii) In publication of notification that the development of draft specifications has been completed, the following points must be clearly stated:
  - a. Entity's name and its address
  - b. Subject matter of procurement (name and volume)
  - c. Contact point to receive draft specifications
  - d. Deadline for the submission of comments
  - e. Notice of any conferences scheduled to be held
- (iii) The deadline for submission, as outlined in point IV(ii), , above, should be set at least 20 days after the day after the publication of the Request for Comments.
- (iv) When the procuring entities, as a result of the comments submitted from interested suppliers, recognize that there is a need to make improvements and modify the draft specifications, these entities must notify all suppliers who have responded to the Request for Comments extended through the Notification or supplementary letters.
- (v) The procedures outlined in IV.(i). through IV.(iv), above, by no means inhibit any supplier who desires to participate in competitive tendering from making inquiries concerning the specifications after the Notice of Procurement.
- (vi) The procuring entities, when requesting comments in accordance with the procedures in IV.(i). through IV.(iv), above, should hold pre-tender conferences, in necessary.

## V. Provision of Information at the Beginning of the Fiscal Year for Procurement for Suppliers' Convenience

- (1) In terms of procurement estimated at no less than 800,000 SDR, each ministry and agency ("entities" as listed in Annex 1 and 3 of Government of Japan in Appendix I of the

revised Agreement; the same applies hereafter) will publish a notification of the following items in Kanpo (the official Government gazette) as early as possible in the fiscal year: However, if a public notice of bids or an invitation for opinions under the preceding paragraph has been issued prior to the public notice under this paragraph, the procedures for provision of information under this paragraph may be omitted.

- a. Entity's name and its address
- b. Subject matter of procurement (name and volume)
- c. Scheduled date for Notice of Procurement

(2) The Ministry of Foreign Affairs, at the beginning of the fiscal year or as early as possible in the fiscal year, will hold a seminar on government procurement for interested domestic and foreign suppliers, and will explain the content stipulated in subpoint (a) through (c), below. The same policy will be implemented by each ministry and agency (including government-affiliated corporations, under the supervision of the relevant ministries and agencies) when there is a need to arrange an opportunity to provide more detailed information to suppliers. In these cases, the sponsors of the seminars will, in conformity with the principle of non-discrimination, publish the content of explanations provided in the seminars, by making it available for public perusal.

- a. Scheduled procurement published in the notification (stipulated in V(1), above).
- b. Information related to procurement presumed to be of interest to many suppliers, including projections for government procurement in the following years, to the fullest extent possible, with budgetary reservation.
- c. Outline of qualification procedures and other qualification requirements necessary to participate in competition.

## VI. Provision of Procurement Information for Suppliers' Convenience

(1) In addition to making efforts to enhance the broad dissemination of information related to bidding opportunities for foreign suppliers and others, the procurement entities will give full consideration to responding promptly and accurately to inquiries from foreign suppliers and others concerning contractual procedures such as qualifications for participation in competitive bidding and submission of tenders, as well as to requests for various information on procurement.

(2) The Japan External Trade Organization (JETRO) will create a database for information related to government procurement listed in the additional Government Procurement Kanpo, and will widely supply it to domestic and foreign firms, including Japan-based foreign-capitalized firms, which are interested in government procurement.

- (3) In order to contribute to the convenience of suppliers who are interested in government procurement, the Ministry of Foreign Affairs, with the cooperation of other ministries and agencies, will make efforts to collect information, including the names and addresses and the names of procurement officers of the procuring entities, which will enable suppliers to make easier reference to the procuring entities. The Ministry of Foreign Affairs will strive to provide information, through notification in Kanpo and other measures, on a wide scale to domestic and foreign suppliers interested in government procurement. Furthermore, the Japan External Trade Organization (JETRO) will accurately provide the above information on a wide scale to domestic and foreign suppliers, by the Website within the next business day in principle, as well as the development of the database for government procurement.
- (4) Each ministry and agency will publish its expected procurement which is estimated at no less than 100,000 SDR at the beginning of the fiscal year, by making such information available for public perusal at the procuring entities' contact points, and by clarifying the section to make reference to.
- (5) In case that information is requested by interested suppliers, JETRO will provide the relevant information in accordance with the principle of non-discrimination, and on the condition that there is sufficient possibility for change in the procurement plans and that the supplier will not file a complaint on such change.
- (6) Each ministry and agency will respond to any inquiries from interested suppliers.

## VII. Gathering Information on Domestic and Foreign Suppliers for Smooth Procurement

Each ministry and agency will make efforts to gather information on domestic and foreign suppliers with regard to the scheduled procurement.

In terms of information concerning foreign suppliers, JETRO will make efforts to provide the procuring entities with relevant foreign suppliers' information, when there are requests for such information from the procuring entities in each ministry and agency.

## VIII. Publication of Information Before the Contract Award of Single Tendering

When intending to make procurement no less than 100,000 SDR through a single tendering, the entity will take the following measures to clarify the appropriateness of such single tendering, except in the cases that no tenders are submitted in competitive tendering, or no successful tenders are resubmitted in the second tendering, or in the case of extreme urgency, or when the procurement entity clarifies to all suppliers at the initial competitive

tendering that should certain conditions be met, the contract will be renewed.

- (1) The entity will publish a notification of its single tendering in Kanpo at least 20 days before the scheduled date for contract award.
- (2) In publication of a notification that procurement will be made through a single tendering, the following will be clarified:
  - a. Subject matter of procurement (name and volume)
  - b. Scheduled date for contract award
  - c. Justification for the single tendering, in accordance with the 1994 Agreement
  - d. In cases in which discussions have begun with the intended supplier for the single tendering, the name of that intended supplier

#### IX. Strict Implementation of Procurement Procedures

- (1) The procuring entities will strictly implement procurements in accordance with the regulations of the revised Agreement and other international agreements the accounting laws and regulations as well as the rules which conform to these laws and regulations. In particular, based on the principle of non-discrimination, and in accordance with the spirit of the current system, which makes it a rule to use open competitive bidding, the procuring entities will reduce their use of designated competitive tendering and single tendering.
- (2) Even for cases in which, due to the nature of the products in question, certain restrictions are imposed on qualifications for participation, fixed objective criteria for qualifications to participate in competitive bidding will be established and the principle of open tendering procedures allowing all who meet that criteria to participate in competitive bidding will be applied, as a principle.

Even in the event that there is no choice but to resort to selective tendering procedures, in order to prevent inordinate designation of any specific contractor, efforts will be made for adequate operation of selective tendering procedures.

- (3) Furthermore, the procuring entities will appropriately implement the following points specified in the notification from the Ministry of Finance in 1980, when the Agreement on Government Procurement was accepted, and in 1987, when revision of the Agreement was made:

○ Enforcement of Government Ordinance Establishing Special Cases Concerning Procedures for Government Procurement on Products (27 November 1980, Ministry of Finance No. 3096, issued by the Minister of Finance to the heads of all other ministries and agencies)

- (i) The supplier to whom the contract is awarded will be appropriately selected, in accordance with the principle of non-discrimination, even in single tendering as well as in open competitive tendering and designated competitive tendering.
  - (ii) Consideration will be given to the convenience of suppliers who desire to participate in open competitive or designated competitive tendering, by taking measures to integrate operations involving qualification procedures to the fullest extent possible.
  - (iii) As the Agreement prohibits the use of open competitive tendering or designated competitive tendering by specifying, among others, a trademark, and restricts instances in which single tendering may be used, efforts will be made to enforce appropriate procurement procedures, including the adoption of procurement procedures involving technical evaluations as necessary.
  - (iv) In view of the strict stipulations regarding instances in which single tendering may be used in conformity with the Agreement, particular attention must be paid in determining whether or not single tendering may be used.
- Enforcement of government ordinance to revise part of the Government Ordinance Establishing Special Cases Concerning Procedures for Government Procurement of Products (25 November 1987, Ministry of Finance No. 3015 (MOF-BB), notification from the Director-General of the Budget Bureau of the Ministry of Finance to the Directors of Financial Affairs Divisions of all the ministries and agencies)
- (i) Appropriate selection of the contracting parties will be made in the cases not only of open competitive tendering but also of designated competitive tendering and single tendering, and market research will not be carried out, nor may information related to the procurement be provided in a manner that benefits certain suppliers.
  - (ii) While unifying criteria/ratings related to qualifications of suppliers for participating in competition, during the qualification process, domestic and foreign suppliers will be treated equally, and the country of origin of the products handled by such suppliers will not be used as the basis for discriminatory treatment.
- (4) Furthermore, application of the overall-greatest-value evaluation method will be actively made to the extent possible, for those procurements for which the lowest-price-award method is not adequate. However, sufficient consideration should be paid in applying such evaluation methods to ensure transparency and fairness, and efficient management of budgetary resources stemming from the tax burden of the people.
- For procurement to which the overall-greatest-value evaluation method is applied, the procuring entities are encouraged to apply the procedures as stipulated in "III. Request for Submission of Materials" and "IV. Request for Comments," above, regardless of the

value of such procurement exceeding the threshold for these procedures.

(5) When a procuring entity applies the technical specifications that are not harmful to the environment specified for a label on the environment or the technical specifications that are not harmful to the environment specified in the relevant laws and regulations in force in Japan, the procuring entity shall ensure the following with respect to these technical specifications:

(a) they are appropriate for defining the characteristics of the goods or services that are the subject of the contract.

(b) they are based on objectively verifiable and non-discriminatory criteria

(c) they are available for inspection by all interested suppliers.

(6) Regarding contract modifications after a successful bid, modifications to the contract scope that increase the contract price by 100,000 SDR or more shall be considered as a new procurement and the procedures set forth in the measures in these Operational Guidelines shall be the procedures set forth in the measures in this Operational Guideline shall be applied as a new procurement. However, this shall exclude cases where there is no significant change in the specifications and the period is extended.

#### X. Operational Considerations for the Convenience of Suppliers

(1) The procuring entities will include in their Notice of Procurement, in addition to those matters required according to the revised Agreement, a contact point related to the relevant tendering. Further, "qualifications for participation in tendering procedures," "delivery place" and "delivery date" were added to the English summary of tender notices.

(2) The period for receiving tenders is extended to no less than 50 days from the date of issuance of the Notice of Procurement, from no less than 40 days stipulated in the revised Agreement, unless special circumstances exist. The procuring entities will withhold the shortening of the time period under Article 11.5 of the revised Agreement unless special circumstances exist.

#### XI. Simpler, More Rational and More Efficient Procurement Procedures

From the perspective of making procurement procedures simpler, more rational and more efficient, for the interim, the following procedures will be implemented:

(1) In order to supply information on procurement in a more convenient manner to suppliers interested in government procurement, and to expand opportunities for potential suppliers to make bids, an additional Government Procurement Kanpo which compiles all government procurement-related notifications in a unified format will be

issued as government procurement notice.

- (2) In order to reduce the burden on applicants and to rationalize the approval process, thorough implementation of a unified process for qualifications will be made. The application forms for qualification will be simplified and unified. Furthermore, qualification processes will be conducted following unified qualification criteria among Government ministries and agencies. Interested suppliers who have applied for registration under the Supplier Registration System should be notified within a reasonable period of time by the procuring entity whether their registration has been granted.

## XII. Disclosing information to the public which enhances transparency in procurement

In addition to disclosing information as stipulated in the revised Agreement etc., in order to contribute to further enhancing transparency, further public disclosure of information will actively be sought through the following measures:

- (1) The procuring entities, when using designated competitive tendering will include the names of designated suppliers for the tendering procedures in the information on contract awards published in Kanpo.
- (2) The procuring entities will make available for their perusal of all interested suppliers a list of the names and addresses of suppliers qualified to participate in open competitive tendering, and publish a notification in Kanpo of the contact point for inquiries regarding such a list.
- (3) The Ministry of Foreign Affairs will publish in Kanpo statistics to be reported to the WTO Committee on Government Procurement.

## XIII. Promotion of Complaint Review Procedures

In order to ensure that fair, competitive and transparent government procurement procedures are implemented based on this operational guideline, complaint review procedures will be promoted under an examination structure that is fair and independent and possesses no conflict of interest with regard to procurement.

## XIV. Ensuring the Effectiveness of This Operational Guideline

- (1) Given that it is the policy of the Government to do procurement based on tenders and proposals that are consistent with the regulations of the Act Concerning Prohibition of

Private Monopoly and Maintenance of Fair Trade (Anti-Monopoly Act), the procuring entities will take appropriate action to address anticompetitive practices.

- a. Based on the "Anti-Monopoly Act Guidelines on the Activities of Entrepreneurs and Trade Associations Involved in Public Tendering," which the Fair Trade Commission formulated, with a view to seeking thorough prevention of "dango" (bid-rigging) activities by entrepreneurs and trade associations, and in order to ensure that actions which violate the Anti-Monopoly Act will not take place in tendering, the procuring entities will maintain close communication with the Fair Trade Commission, and deal severely with anti-competitive practices in accordance with the relevant laws and ordinances.
- b. When the procuring entities obtain information indicating the possible existence of practices that may violate the Anti-Monopoly Act in relation to their procurement, including the development of their procurement specifications, the procuring entities, in order to execute the measures which the Fair Trade Commission decides to be appropriate, will provide such information on a timely basis to the Fair Trade Commission so as to enable the Commission to take such steps as it deems appropriate.
- c. To this end, the procuring entities will provide the name of their contact persons to the Fair Trade Commission to facilitate procedures for the detection and provision of information concerning practices that may violate the Anti-Monopoly Act.

- (2) The Ministry of Internal Affairs and Communications will make efforts to implement effective administrative evaluation and inspection in order to ensure transparency and fairness in government procurement procedures.

#### XV. Guidance and requests for cooperation

All Government ministries and agencies will instruct all government-related institutions to make further efforts to improve procurement procedures, with the aim of achieving non-discriminatory, transparent procedures based on the 1994 Agreement, the revised Agreement and other international agreements, and this operational guideline, and will ascertain the actual situation of their implementation.

Further, while taking into account the local circumstances and the provisions of the relevant laws and regulations, local governments will be requested to act according to the spirit of this operational guideline, concerning entities, thresholds and procurement which are subject to the 1994 Agreement, the revised Agreement and other international agreements.

#### XVI. Review and Follow-up of This Operational Guideline

- (1) In order to ensure steady implementation of this operational guideline, a follow-up meeting among the relevant organizations will be organized, led by the Assistant Chief

Cabinet Secretary. The meeting will annually conduct follow-ups on the status of the implementation of this operational guideline and on the status of its utilization by suppliers. The meeting will then review the results of the follow-up, as well as the status of the implementation of this operational guideline. At such times, opportunities will be established to seek opinions and requests from domestic and foreign suppliers, and their representative organizations.

- (2) The Assistant Chief Cabinet Secretary will compile individual procurement results (information on individual awards and information on contracts through limited tendering procedures) and publish an annual report concerning the results of follow-up conducted in the above-mentioned meeting together with government procurement results.

(Attachment) Scope of Implementation of the Measures in this Operational Guideline with  
 Regard to Specially Stipulated Procedures and/or Measures in Specific Sectors

	Supercomputers	Satellites	Computers
3. Request for Submission of Materials for Entities' Market Research	-	-	Subject to this guideline
4. Request for Comments to Ensure Smooth Procurement	-	-	Subject to this guideline
5.(1) Notice in Kanpo at Start of Fiscal Year	Subject to this guideline	Subject to this guideline	-
5.(2) Holding of Seminar at Start of Fiscal Year	Subject to this guideline	Subject to this guideline	Subject to this guideline
6. Provision of Procurement Information for Suppliers' Convenience at Start of Fiscal Year	Subject to this guideline	Subject to this guideline	Subject to this guideline
7. Gathering Information on Domestic and Foreign Suppliers for Smooth Procurement	Subject to this guideline	Subject to this guideline	Subject to this guideline
8.(1) Notice in Kanpo on Limited Tendering	-	-	Subject to this guideline
8.(2) Items to be Notified	Subject to this guideline	Subject to this guideline	Subject to this guideline
10. Operational Considerations for the Convenience of Suppliers	Subject to this guideline	Subject to this guideline	Subject to this guideline
11. Simpler, More Rational and More Efficient Procurement Procedures	Subject to this guideline	Subject to this guideline	Subject to this guideline
12. Disclosing information to the public which enhances transparency in procurement	Subject to this guideline	Subject to this guideline	Subject to this guideline