



Contracting Procedures of the Japanese Government

《 Content 》

- ① Outline of the contracting scheme
- ② Programmes for fair public procurement

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① Outline of the Contracting Scheme (Basic act: Public Accounting Act)

How Does the Japanese Government Decide its Counterparty?

《 Competitive approaches 》

General competitive contracts

This type of contracting method is employed in principle. The ordering party makes public announcement, decides a successful bidder through public bidding among the unspecified number of bidding participants, and enters into a contract with the successful bidder.

Designated competitive contracts

The ordering party decides successful bidder through bidding among competition participants designated by the ordering party, and enters into a contract with the successful bidder.

Auction sale

An unspecified number of competition participants are invited through public announcement and join competition each other orally or with their specific act.

《 Noncompetitive approach 》

Negotiated contracts

The ordering party decides its counterparty and enters into a contract with such counterparty, without employing the competitive bidding process.

Negotiated Contracts

Negotiated contract is employed in the following cases:

- ① Competition is not possible owing to the characteristics or purposes of the contract <Noncompetitive negotiated contract>
 - A contract is for a land lot at an unsubstitutable location (for example, a road site). Purchasing a land lot at a different location will not accomplish the intended purpose of the contract.
 - The counterparty has special know-how that is unsubstitutable with the other person's know-how, and the government will not accomplish the intended goal of civil services if it does not enter into a contract with the counterparty.
 - A museum intends to purchase a certain work by a certain artist.
 - The government intends to procure defense equipment manufactured under license.
- ② Competition is not desirable owing to urgent needs.
 - The government takes first-aid actions during disasters to protect a citizen's life and ensures safety of properties when a disaster occurs.
- ③ Competition will pose some negative impacts
 - The government sometimes needs to enter into an additional contract for ongoing construction projects if an unexpected circumstance occurs.

Negotiated contract may be employed in the following cases:

- Estimated contract price stands at a small sum, etc.
- | | |
|---|---|
| (Example of small-sum negotiated contracts) | (Other example) |
| Construction or production: ¥2.5 million or less | Unsuccessful negotiated contracts without successful bidder |
| Acquisition of physical goods: ¥1.6 million or less | This type of contract is employed if competitive bidding or follow-up bidding does not yield successful bidder, or if successful bidder fails to enter into the contract. |



② Programmes for Fair Public Procurement



Outline of Scandals

[Fractionated, small-sum negotiated contract scandal (cash registers)] July 2004

Social Insurance Agency only explained to certain providers the specifications of cash registers and the number of cash registers installed, and it entered into negotiated contracts. In addition, social insurance offices have split up the purchasing unit into small-lot orders of nine cash registers or less without justifiable reasons.

[Bridge bid-rigging scandal] May 2005

In the central government's construction projects of steel bridges, 47 companies that belong to the two bid-rigging societies (Society K and Society A) engaged in collusive bidding (by adjusting new order acceptance) and decided successful bidders and bid prices in advance on the basis of the past records so that successful bidders would always win new orders.

* These 47 companies belonging to the bid-rigging societies have successfully won most orders for construction works placed by regional development bureaus of Ministry of Land, Infrastructure, Transport and Tourism from FY2002 to FY2004.

It is revealed that Society K and Society A have adjusted the approach to be followed by their member firms for accepting new orders placed by Japan Highway Public Corp. Executive officers of Japan Highway Public Corp. were also involved in the adjustment process of new order acceptance.

[DFAA-led bid-rigging scandal] January 2006

As for competitive bidding for US Yokota Air Base, Defense Facilities Administration Agency (DFAA) decided successful bidders in advance so that a bidder that accepts parachutists from former Defense Agency on the advantageous conditions will win new orders for construction works on favorable conditions.

Appropriate Public Procurement (Outline of Scandal and Actions Taken (1))

[Fractionated, small-sum negotiated contract scandal (cash registers)]

July 2004



- Handling clerical duties on negotiated contracts
(Notice of Ministry of Finance to the head of ministries/agencies dated February 25, 2005)
 - Imposing stricter disclosure criteria on negotiated contracts
Except for small-sum contracts (¥1 million in the case of a consignment contract), the ordering party must disclose counterparties, contract prices, and justifiable reasons on the website.
- Handling clerical duties on negotiated contract-type consignment contracts
(Notice of Director General of the Budget Bureau to directors of Accounting Division of ministries/agencies dated February 25, 2005)
 - Prohibiting lump-sum re-consignment and introducing an approval scheme for re-consignment

Appropriate Public Procurement (Outline of Scandal And Actions Taken (2))

[Bridge bid-rigging scandal] May 2005



- Instruction of the Prime Minister (with regard to amendment to "Act on Elimination and Prevention of Involvement in Bid Rigging, etc.")
 - Outline of amendments to "Act on Elimination and Prevention of Involvement in Bid Rigging, etc."
 - Creating criminal sentences for ordering party's staff
 - Expanding the meaning of "involvement in bid rigging etc."
 - Expanding the scope of ordering parties subject to this Act
 - Requiring disclosure of survey results on damage compensations and reasons for disciplinary actions against staff workers, etc.
- Setting up "Liaison Conference of Related Ministries/Agencies on Improvement in Bid Contracts for Public Works" (December 2005)

Appropriate Public Procurement (Outline of Scandal And Actions Taken (3))

[DFAA-led bid-rigging scandal] January 2006



- Setting up "Liaison Conference of Related Ministries/Agencies on Appropriate Public Procurement Practices" (January 2006)
- Programs for appropriate public procurement practices
(The February 2006 decision of "Liaison Conference of Related Ministries/Agencies on Appropriate Public Procurement Practices")
 - Public works: Increasing general competitive bidding and expanding the overall evaluation bidding approach
 - Negotiated contracts: Conducting emergency inspections, and expanding information disclosure on negotiated contracts

Appropriate Negotiated Contracts with Public-interest Corporations, etc. (The June 2006 decision of "Liaison Conference of Related Ministries/Agencies on Appropriate Public Procurement Practices")

[Developing the Negotiated Contracts Review Plan]

- Re-examining negotiated contracts with public interest corporations, and shifting approximately 70% of the negotiated contracts (on the monetary value basis) to general competitive bidding

[Programs after developing the Plan]

- Re-examining negotiated contracts with contracting parties other than public interest corporations on the basis of the same concept and revising the Negotiated Contracts Review Plan in January 2007
- Further enhancing information disclosure
- Setting up procurement-related one-stop information service desks at each ministry/agency, etc.



Appropriate Public Procurement (1) (Notice of Finance Minister to the head of ministry/agency dated August 25, 2006)

1. Actions for appropriate bidding and contracting practices

[Competitive bidding]

- Setting up eligibility for participating in competitive bidding as necessary for fair and rational competitions.
- Pushing ahead by introducing the overall evaluation bidding approach-based general competitive bidding for public procurement practices for R&D, survey research, public relations services, etc.

[Negotiated contracts]

- Except for counterparties clearly specified in applicable laws, the negotiated contracts will be replaced with general competitive bidding.
- ⇒ Negotiated contracts for civil service assistance tasks, survey research, or leasing services will be replaced with general competitive bidding (including the overall evaluation bidding approach-type general competitive bidding)



Appropriate Public Procurement (2) (Notice of Finance Minister to the head of ministry/agency dated August 25, 2006)

2. Actions for appropriate re-consignment practices

- Prohibiting lump-sum re-consignment
- Requiring contracting officer's prior approval in the case of re-consignment
- Identifying compliance schemes, etc.

3. Disclosing information on contracts

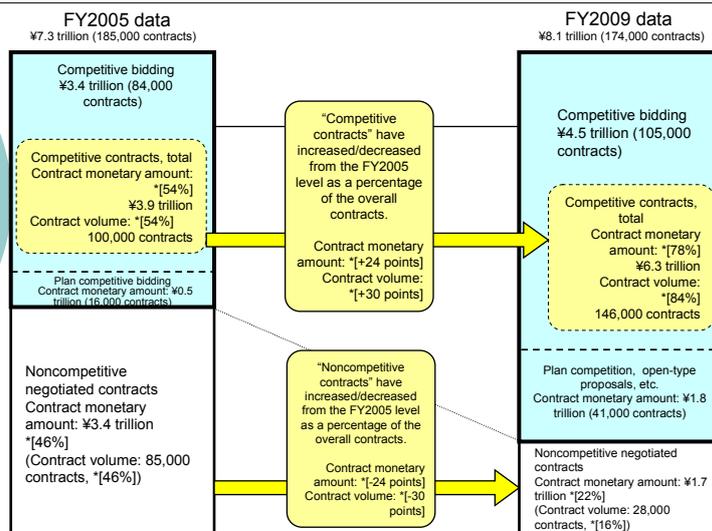
- Disclosing information on competitive bidding as well and improving user-friendliness of the overall contracting information, including public works information
- ⇒ Except for small-sum contracts, a list of all contracts will be disclosed.
- [Information with improved visibility]
- Estimated contract prices - Successful bidding rate
 - If the ordering party enters into a negotiated contract with a public interest corporation in its charge, the ordering party must disclose the number of central government's former regular civil servants serving for the public interest corporation as of the day of entering into such a contract.

Appropriate Public Procurement (3) (Notice of Finance Minister to the head of ministry/agency dated August 25, 2006)

4. Setting up procurement-related one-stop information service desks at each ministry/agency
5. Conducting internal audits
 - Putting emphasis on auditing negotiated contracts
 - Clearly identifying how internal audits are conducted, etc.
6. Preparing contract-related statistics
 - Preparing contract-related statistics every fiscal year (since FY2006)
 - Statistics on the number of contracts and contract prices
 - Statistics on negotiated contracts

Status of Competitive Contracting Practices in FY2009

○ In FY2009, "noncompetitive negotiated contracts" have decreased since FY2005 as a percentage of the overall contracts by 24 points on the monetary value basis and by 30 points on the contract volume basis.



(Note 1) Data in parentheses with asterisk represent "competitive contracts" or "noncompetitive contracts" as a percentage of the overall contracts.
(Note 2) The total sum of indicated data may not be 100% in some cases because data are rounded off.