

Reference Material III - 5

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

- Further efforts are requested to allow for a greater margin of time for the receipt of tenders.

Response from the Government of Japan

Under the 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. In 2005, the average period was 68.9 days.

- 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.

- The attribution of intellectual property rights from the development work commissioned by the government is limited to the government and the private sector often cannot use them. Is this not asking too much of the suppliers?

Response from the Government of Japan

Regarding the attribution of intellectual property rights for information systems developed by an enterprise in projects commissioned by the state, the government has just submitted the “Draft bill to amend the Law on Special Measures for Industrial Revitalization and other related laws” to the ordinary Diet session in 2007, with a view to attributing the intellectual property rights for the development of software to the developers.

- 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

The “Basic Policy for the Public Procurement of Computer Systems” (decided by the Chief Information Officers (CIO) Council on March 1, 2007)

(http://www.soumu.go.jp/gyoukan/kanri/a_01_f.htm), which was formulated pursuant to the “Priority Program - 2006” (decided by the IT Strategic Headquarters on July 26, 2006), etc., provides that the responsibility of compensation for damage should be made clear in the contract. The government will promote its rigorous implementation by the ministries and agencies pursuant to the Policy.

- Regarding the Overall-Greatest-Value Evaluation method (OGV) for the procurement of information systems, it is believed that rather than evaluating technical merits and price merits uniformly on a 1:1 ratio, the ratio should be changed flexibly where a technical evaluation is sought.

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 remains unchanged regardless of price, we consider that full application of this evaluation method can be an effective countermeasure against ultra-low-price bids.

We intend to follow-up on the implementation of government procurement for information systems and where necessary, examine improved methods of evaluation.

● It is believed that the procurement divisions, etc. of procuring entities must be educated on the “Memorandum of Agreement on Government Procurement for Information Systems”. Furthermore, it is believed that the government must evaluate whether or not the items listed in the Memorandum are being undertaken in an appropriate manner.

Response from the Government of Japan

Training on the “Memorandum of Agreement on Government Procurement for Information Systems” is provided to procurement officers from the ministries and agencies in procurement and outsourcing courses of the information system integrated training conducted by the Ministry of Internal Affairs and Communications.

The Ministry has been conducting a follow-up study on the progress of the items to be undertaken by each ministry and agency as listed in the “Memorandum of Agreement on Government Procurement for Information Systems”, with a view to ensuring its effectiveness.

(http://www.soumu.go.jp/gyoukan/kanri/a_01-03.html)

● Regarding procurement of information systems, is it better, instead of prohibiting the bundled procurement inclusive of hardware and software development as well as their operations, to use an unbundled approach in which orders are placed with vendors that specialize in them?

Response from the Government of Japan

The “Basic Policy for the Public Procurement of Computer Systems” (decided by the Chief Information Officers (CIO) Council on March 1, 2007)

(http://www.soumu.go.jp/gyoukan/kanri/a_01_f.htm), which was formulated pursuant to the “Priority Program - 2006” (decided by the IT Strategic Headquarters on July 26, 2006), etc., provides that the unbundled procurement will be made in principle for particularly important information systems. The government will promote its rigorous implementation by the ministries and agencies pursuant to the Policy.