

- (b) *Are the reviews undertaken before recourse to limited tendering (i.e., to authorize its use) or after limited tendering has been conducted?*

Central government entities conducted the review before they approve the use of limited tendering.

- (c) *Does the Government ensure that reviewers evaluate limited tendering decisions using a common set of standards across all entities? Is there a government-wide model or guideline for the establishment and conduct of such reviews?*

As each entity conducts review procedures within its discretion, there is no common set of standards, government-wide model or guideline across all entities.

- (d) *To whom do the reviewers report within procuring entities?*

The reviewers report to the office that submitted an application for using limited tendering whether they approve it or not.

- (e) *What criteria do reviewers use to evaluate the appropriateness of using limited tendering in a particular procurement?*

The reviewers check the applications to see if they meet the requirements for limited tendering, which are provided by the Agreement on Government Procurement, the Cabinet Order Stipulating Special Procedures for Government Procurement of Products or Specified Services and other legislation.

- (f) *Can Japan cite instances in which actions by reviewers of limited tendering decisions overturned those decisions and required the use of competitive tendering?*

For example, the fiscal 1999 annual report of the audit, includes a report stating that the Board of Audit advised the national university hospitals that commissioned a catering company to provide meals for their patients by limited tendering to take appropriate measures to switch it to open tendering.

- (g) *Is the mechanism for reviewing limited procurement decisions insulated from procurement officials to ensure the objectivity of the review? If so, please explain.*

As explained under (a), the mechanism for reviewing limited tendering decisions is insulated from procurement officials to ensure the objectivity of the review.

- (h) *Are there any reviews of limited tendering outside of the procuring entity, such as by the Ministry of Finance?*

The Board of Audit (BOA) audits the accounts of central government entities etc. In this capacity, the BOA also reviews already implemented procurement contracts by the entities to see if competition was well guaranteed based on the spirits of the Accounts Law and relevant regulations and if economical procurement was ensured. In this review, the BOA examines, for example, the appropriateness of each contract which used limited tendering, and whether competitive tendering was properly functioning.

Question from Switzerland

Can the Government Procurement Review Board break a contract after a contract has been awarded and signed?

Regarding the suspension of contract execution and performance by the procuring entity concerned, paragraph 5(6)(iv) of the above-mentioned Review Procedures for Complaints Concerning Government Procurement stipulates that "The Procuring Entity shall suspend the execution or performance of the contract immediately upon receiving the Board's request. If, however, the head of the Procuring Entity determines that he or she cannot obey the request due to urgent and compelling circumstances, the Procuring Entity may fail to suspend the same but shall immediately provide written notification of its decision with reasons therefore to the Board." (provisional translation)

Question from Switzerland

In the case of a post-execution complaint and a suspension of the contract performance, who bears the costs of the suspension?

The challenge procedures by the central and sub-central governments have no provision as to who bears the costs of the suspension of the contract performance.

Question from the United States

When the Government Procurement Review Board requests a procuring entity to suspend the execution or performance of a contract, and the entity does not comply with the request, does the Board or any other entity, have the authority to overrule the entity's decision?

"The Review Procedures for Complaints Concerning Government Procurement" (decided by the Office of Government Procurement Review on 14 December 1995) stipulates as follows:

Paragraph 5(6)(iv): The Procuring Entity shall suspend the execution or performance of the contract immediately upon receiving the Board's request. If, however, the head of the Procuring Entity determines that he or she cannot obey the request due to urgent and compelling circumstances, the Procuring Entity may fail to suspend the same but shall immediately provide written notification of its decision with reasons therefore to the Board. (provisional translation)

Question from the United States

With regard to the provision in GPA Article XX:6(b) that "participants shall have access to all proceedings", does that mean that the complaining supplier has access to all of the documents and material that the procuring entity provides to the Board? Is the procuring entity allowed to provide information to the Board to which the complaining supplier would not be allowed access?

"The Review Procedures for Complaints Concerning Government Procurement" (ditto) stipulates as follows:

Paragraph 5(7)(iii): When the Board determines that it is necessary to evaluate whether the filing of briefs, pleas, or other documentation would harm public interest or threaten to significantly impede the Procuring Entity from executing its official duties, the Board may have the Procuring Entity submit the same. In this case, the Board shall not disclose the same to anyone. (provisional translation)

Paragraph 5(9)(iii): The Board shall not disclose to third parties any trade secrets, manufacturing processes, or intellectual property of the supplier, or any other confidential commercial information, furnished by the supplier, except with the supplier's consent. (provisional translation)

Question from the United States

Are there domestic rules related to the treatment of confidential or business proprietary information that is submitted to the Board? If so, please provide.

"The Review Procedures for Complaints Concerning Government Procurement" stipulates as follows:

Paragraph 5(9)(iii): The Board shall not disclose to third parties any trade secrets, manufacturing processes, or intellectual property of the supplier, or any other confidential commercial information, furnished by the supplier, except with the supplier's consent. (provisional translation)

As for the definition of "confidential commercial information," the Code of Schedules for Review Procedures for Complaints Concerning Government Procurement" (decided by the Office of Government Procurement Review on 11 January 1999) stipulates as follows:

Paragraph 4(12): The "confidential commercial information" in the Procedures 5(9)(iii) means the useful technical or trade information for the business activities which is not disclosed. (provisional translation)

Paragraph 4(11) of the Code stipulates non-disclosure of the report from the Procuring Entity except to the parties.

(Note: The provisional translation of the whole text of the Review Procedures for Complaints Concerning Government Procurement is available at <http://www5.cao.go.jp/access/english/chans/tetuzuki-e.html>. The provisional translation of the whole text of the Code Schedule for Review Procedures for Complaints Concerning Government Procurement is available at <http://www5.cao.go.jp/access/english/chans/saisoku-e.html>.)

Question from Hong Kong, China

Paragraph 1.A(e) of GPA/37 states that the Government Procurement Review Board considers complaints with regard to the procurement by entities other than sub-central government entities. Paragraph 1.B(d) of GPA/37 provides that prefectural governments and designated cities have their own procedures to process complaints regarding procurement. How is the information about the challenge procedures of individual prefectural governments and designated cities made generally available?

Sub-central entities listed in Japan's Annex 2 of Appendix I basically have challenge procedures similar to those of central governments. The information about the procedures of individual sub-central governments is available through the contact point of prefectural governments and designated cities, as listed in the Government website (http://www.mofa.go.jp/j_info/japan/procurement; see the table in Attachment 4).

Question from Canada

Where are the decisions of the Government Procurement Review Board available? Are the decisions made available on an Internet website?

The decisions are available on the following government website: http://www5.cao.go.jp/access/english/chans_main_e.html.

VIII. INFORMATION TECHNOLOGY

Question from Canada

With respect to information technology procurement, in response to question 5, Japan states that an electronic database is used "with a view to facilitating access to information on government procurement". Is Japan considering using information technology in more stages of the procurement process, such as posting electronic notices of proposed procurement and the reception of bids electronically?

(1) Government procurement of goods and services

In addition to the official gazette or other publications on information on procurement, the central government entities provide such information on their websites, thereby improving their provision of information on their procurement and making it easier for the general public to access such information. To that end, the Government created a database that provides integrated procurement information and began to provide such information from FY 2001 (cf. Appendix 6 of the "Guide to the Government Procurement Market of Japan" (http://www.mofa.go.jp/j_info/japan/procurement/)).

The Government unified the qualification for participating in competitive contracts with central government entities and established a unified list of registered suppliers. Under this new system, if a supplier submits an application to any one central government entity, the qualification obtained will be effective for all central government entities. This system has been introduced from this year's periodic judging of applications conducted in January 2001 (cf. Appendix 3 of the "Guide to the Government Procurement Market of Japan" (http://www.mofa.go.jp/j_info/japan/procurement/)). The Government plans to introduce submission and opening of tenders by Internet by the end of FY 2003.

The Government plans to introduce submission and opening of tenders by Internet by the end of FY 2003.

(2) Public works

The Government is scheduled to introduce submission and opening of tenders by Internet for part of public works under the jurisdiction of the Ministry of Land, Infrastructure and Transport in October 2001. The Government intends to introduce such a system, in principle, in all public works under the jurisdiction of the Ministry by the end of FY 2004. The Government begins to publicize prospects of orders and information on tenders and contracts for public works by Internet on a step-by-step basis from April 2001.

Question from Switzerland

What are the prospects for e-procurement? (ref. point 5 of GPA/37)

See the reply to the question from Canada above.

IX. OTHER MATTERS

Question from the United States

We understand that there have been several well-publicized cases of collusive practices in Japan's public works market. What specific steps is Japan taking to address such practices?

The Act for promoting Proper Tendering and Contracting for Public Works⁵ entered into force in April 2001. This Act sets out principles such as ensuring transparency in tendering/contracting procedures, promoting fair competition, and abolishing improper actions. Measures against improper actions have been taken through this Act that stipulates, for example, an obligation of entities⁵ procuring public works to inform the Fair Trade Commission of the fact leading to sufficient suspicion about improper actions (e.g. improper publication of information on tendering and contract, bid riggings) when they become aware of it.

⁵ Entities include all entities in Japan's Annexes 1 and 2 and 40 quasi-governmental agencies cited in the enforcement order of the Act.

ATTACHMENT 1

General Outline and Summary of the Act, Main Points of the Enforcement Order and the Items of the Guiding Principles on Measures for Promoting Proper Tendering and Contracting for the Public Works

