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This English translation of the Act on Elimination and Prevention of Involvement in Bid Rigging, etc. and Punishments for Acts by Employees that Harm Fairness of Bidding, etc. has been prepared (up to the revisions of Act No. 110 of 2006 (effective March 14, 2007)) in compliance with the Standard Bilingual Dictionary (March 2007 edition). This is an unofficial translation. Only the original Japanese texts of laws and regulations have legal effect, and the translations are to be used solely as reference material to aid in the understanding of Japanese laws and regulations. The Government of Japan shall not be responsible for the accuracy, reliability or currency of the legislative material provided in this Website, or for any consequence resulting from use of the information in this Website. For all purposes of interpreting and applying law to any legal issue or dispute, users should consult the original Japanese texts published in the Official Gazette.

## **Act on Elimination and Prevention of Involvement in Bid Rigging, etc. and Punishments for Acts by Employees that Harm Fairness of Bidding, etc. (Act No. 101 of 2002)**

### **Article 1 (Purpose)**

This Act shall provide for measures to be taken to eliminate and prevent involvement in bid rigging etc, including demands by the Fair Trade Commission to the Heads of Ministries and Agencies etc. regarding improvement measures necessary to eliminate involvement in bid rigging etc., claims directed at employees involved in said bid rigging for damage compensation, investigation of the reasons for disciplinary actions against said employees, and coordination and cooperation among the administrative organs concerned, and other matters, and provide for punishments to be imposed on employees for acts that harm the fairness of bidding, etc.

### **Article 2 (Definition)**

- (1) The term “Heads of Ministries and Agencies” in this Act shall mean the heads of Ministries and Agencies as stipulated in Article 20, paragraph 2, of the Public Finance Act (Act No. 34 of 1947).
- (2) The term “specified corporation” in this Act shall mean an entity that meets any of the following conditions:
  - (i) A corporation in which the government or local governments have equity of 50% or over

- (ii) Out of corporations established under a special Act, a business corporation of which shares representing at least one third of the total outstanding shares or one third of the total voting rights owned by all shareholders are required by law to be owned by the government or a local government at all times (excluding corporations stipulated in Item 1 above and entities stipulated under Cabinet Orders)
- (3) The term “Heads of Ministries and Agencies etc.” in this Act shall mean the heads of Ministries and Agencies, heads of local governments as well as the representatives of specified corporations.
- (4) The term “bid rigging etc.” in this Act shall mean, in respect of conclusion of agreements by the government, local governments or specified corporations (hereinafter referred to as “government, etc.”) for the sale and purchase, lease, contract, etc., with a counter party to be chosen by auction or other competitive means (hereinafter referred to as “bidding, etc.”), the acts in violation of the provision of Article 3 or Article 8, paragraph 1, item 1 of the Act on the Prohibition of Private Monopolization and Maintenance of Fair Trade (Act No. 54 of 1947), through such practices that an entrepreneur wishing to participate in the bidding decides in conjunction with other entrepreneurs the successful bidder or the successful bid price, or the trade association makes an entrepreneur wishing to participate in the said bidding do the said acts.
- (5) The term “involvement in bid rigging etc.” in this Act shall mean the involvement in bid rigging etc. by the employees of government or local governments, or directors or employees of specified corporations (hereafter called “the employees”), and falling under any one of the following items.
  - (i) Having an entrepreneur or trade association engage in bid rigging etc.
  - (ii) Nomination of the counter party of a contract in advance, or indication or suggestion in advance of wishes to the effect that a specified person be the counter party of the contract.
  - (iii) Out of various data concerning bidding or contract, indication or suggestion of information held in confidential files to a specified entrepreneur or trade association, access to which shall facilitate bid rigging etc. by the specified entrepreneur or trade association.
  - (iv) In connection with a specific bid rigging, etc., aiding bid rigging, etc. nominating a specific person as participant to a bid, or by any other method, at the express or implicit request of an entrepreneur, trade association, or any other entity or by voluntarily approaching these persons, for the purpose of facilitating such bid rigging, etc., in breach of such employee's duties.

**Article 3** (Demand for improvement measures to the heads of Ministries and Agencies)

- (1) The Fair Trade Commission may, when it recognizes involvement in bid rigging etc. as a result of its investigation of bid rigging cases, demand that the Heads of Ministries and Agencies etc. implement improvement measures on the administration of bidding and contracts that are necessary for eliminating the said involvement in bid rigging etc. (hereinafter simply referred to as “improvement measures”).
- (2) The Fair Trade Commission may, when it finds it particularly in cases where it finds involvement in bid rigging etc. as a result of its investigation of bid rigging etc. cases (even when said involvement in bid rigging etc. has already been eliminated), demand that the Heads of Ministries and Agencies etc. implement improvement measures to ensure that said involvement in bid rigging etc. is eliminated.
- (3) The Fair Trade Commission shall, in making demands under the provisions of the preceding two paragraphs, deliver written statements describing the content of the said demand and the reasons thereof to the Heads of Ministries and Agencies etc.
- (4) The Heads of Ministries and Agencies etc. shall, when they receive a demand under the provisions of paragraph 1 or paragraph 2, perform the necessary investigation, and shall, when it becomes evident that there is or was the said involvement in bid rigging etc., implement the improvement measures, based on the results of the said investigation, necessary to eliminate the said involvement in bid rigging etc. or to ensure that the said involvement in bid rigging etc. has been eliminated.
- (5) The Heads of Ministries and Agencies etc. may, when it finds it necessary in the investigation of the preceding paragraph ask the Fair Trade Commission to provide data and other necessary cooperation.
- (6) The Heads of Ministries and Agencies etc. shall publicize the results of the investigation of paragraph 4 and the content of the improvement measures implemented under the provisions of the same paragraph, and notify the Fair Trade Commission thereof.
- (7) The Fair Trade Commission may, when it finds it particularly necessary in cases where it has received notification under the preceding paragraph, express its opinions thereon to the Heads of Ministries and Agencies etc.

**Article 4 (Claim against employees for compensation for damage)**

- (1) The Heads of Ministries and Agencies etc. shall, when there was a demand under the provisions of paragraph 1 or paragraph 2 of the immediately preceding Article, perform the necessary investigation if there is any damage to the government, etc., due to the said involvement in bid rigging etc.
- (2) The Heads of Ministries and Agencies etc. shall, when it has been recognized, as

a result of the investigation, that there was damage to the government, etc. make the necessary investigation if the employees involved in said bid rigging etc. are liable to the government for damage as well as the amount of damage.

- (3) The Heads of Ministries and Agencies etc. may, when it finds it necessary in conducting the investigation of the preceding two paragraphs, ask the Fair Trade Commission to provide data and other necessary cooperation.
- (4) The heads of Ministries and Agencies shall publicize the results of the investigation made in accordance with paragraph 1 and paragraph 2 of this Section.
- (5) The Heads of Ministries and Agencies etc. shall, when as a result of the investigation it has been found that the employees involved in said bid rigging etc. caused damage due to willful or gross negligence, demand compensation for the damage promptly.
- (6) In respect of cases where the employees involved in said bid rigging etc. are liable for damage under the provisions of Article 3, paragraph 2, of the Act on the Responsibility of Government Employees who Execute the Budget (Act No. 172 of 1950) (including the case of application under the provisions of Article 9, paragraph 2, of the same Act mutatis mutandis), the Heads of Ministries and Agencies or the heads of government corporations (meaning the heads of government corporations stipulated in paragraph 1 of the same aArticle) shall, irrespective of the provisions of paragraph 2, paragraph 3 (limited to the part concerning the investigation of paragraph 2), paragraph 4 (limited to the part concerning the publication of the results of the investigation of paragraph 2) and the preceding subsection, paragraph, as provided for by the same Act, necessary measures promptly. In this case, “without delay” in Article 4, paragraph 4, of the same Act (including cases of application under Article 9, paragraph 2, of the same Act mutatis mutandis) shall read “promptly accompanied by the result of the investigation of Article 4, paragraph 1, of the Act concerning Involvement in Bid Rigging etc. by the said Government Employees who Execute the Budget (meaning the involvement in bid rigging etc. stipulated in Article 2, paragraph 5, of the Act on Elimination and Prevention of Involvement in Bid Rigging etc. and Punishments for Acts of Employees that Harm Fairness of Bidding, etc. (Act No. 101 of 2002)).”
- (7) In cases where employees involved in said bid rigging etc. are liable for damage under Article 243-2, paragraph 1, of the Local Autonomy Act (Act No. 67 of 1947) (including the application mutatis mutandis of Article 34 of the Local Public Enterprise Act (Act No. 292 of 1952)), the provisions of paragraph 2, paragraph 3 (limited to the part concerning the publication of the results of the investigation of paragraph 2), paragraph 4 (limited to the part concerning the investigation of paragraph 2) and paragraph 5 shall not apply, and the term “request decision” in

Article 243-2, paragraph 3, of the Local Autonomy Act shall read “request a prompt decision,” and the provisions of the said aArticle shall apply (including the application mutatis mutandis of Article 34 of the Local Public Enterprise Act).

**Article 5** (Investigation of the reasons for disciplinary actions against employees)

- (1) The Heads of Ministries and Agencies etc. shall, when there is a demand under the provisions of Article 3, paragraph 1 and paragraph 2, perform the necessary investigation if it is possible to impose disciplinary actions based on the National Public Service Act and the Local Public Service Act, upon the employees involved in said bid rigging etc. Such action shall mean dismissal, suspension of duties, a cut in salary, or warning and other sanctions in the case of specified corporations (excluding specified incorporated administrative agencies - meaning incorporated administrative agencies (stipulated under Article 2, paragraph 2 of the Act on General Rules for Incorporated Administrative Agencies (Act No. 103 of 1999); hereinafter the same shall apply in this paragraph) and excluding specified local incorporated administrative agencies - meaning specified local incorporated administrative agencies (stipulated under Article 2, paragraph 2 of the Act on Local Incorporated Administrative Agencies (Act No. 118 of 2003); hereinafter the same shall apply in this paragraph). Provided, however, that the Heads of Ministries and Agencies, heads of specified incorporated administrative agencies or heads of specified local incorporated administrative agencies, in cases where they do not have the appointive power of the said employees (including cases where the appointive power of the said employees was assigned), it shall suffice if the notification was made to the person with appointive power (including the person who was assigned the appointive power of the said employees; hereinafter referred to as “appointer”) to the effect that the demand under the provisions of Article 3, paragraph 1 or paragraph 2, was received.
- (2) The appointers, who received notification under the proviso of the preceding paragraph, shall perform the necessary investigation if it is possible to impose disciplinary actions upon the employees involved in the said involvement in bid rigging etc.
- (3) The Heads of Ministries and Agencies or the appointers may, when it finds it necessary to perform an investigation based on the main clause of paragraph 1 or the preceding paragraph, ask the Fair Trade Commission to provide data and other necessary cooperation.
- (4) The heads of Ministries and Agencies or appointers shall publicize the results of the investigation made in accordance with the main clause of paragraph 1 or paragraph 2 of this aArticle.

**Article 6** (Investigation by designated employees)

- (1) The Heads of Ministries and Agencies etc. or appointers shall have the employees designated by them (hereinafter in this article referred to as “designated employees”) perform the investigation as provided for in Article 3, paragraph 4; Article 4, paragraph 1 or paragraph 2; or the main clause of paragraph 1 or paragraph 2 of the preceding article, (hereinafter in this article referred to as “investigation”). In this case, Heads of Ministries and Agencies etc. or appointers shall implement the necessary measures to secure an effective investigation by designating employees equipped with abilities and experience to properly perform the said investigation.
- (2) The designated employees shall, in performing the investigation, conduct it from a fair and neutral standpoint.
- (3) In cases where the designated employees conduct the investigation, the employees of the said Ministries and Agencies (meaning the Ministries and Agencies stipulated in Article 21 of the Public Finance Act; hereinafter the same shall apply), local governments or specified corporations shall cooperate with the said investigation.

**Article 7** (Coordination and cooperation among the administrative organs concerned)

With regard to the prevention of involvement in bid rigging etc., governmental administrative organs concerned shall cooperate by maintaining mutual coordination.

**Article 8** (Disturbance of bidding, etc. by employees)

If an employee, in respect of concluding an agreement for the sale and purchase, lease, contract, etc., by bidding etc. by the government, etc. for which such employee works, has conducted any acts that harm the fairness of such bidding, etc. by inciting any entrepreneur or person to conduct bid rigging, informing any entrepreneur or person the target price or any other secret concerning such bidding, etc. or by any other method, in breach of his/her duties, such employee shall be sentenced to imprisonment with labor not exceeding five years or punished with a fine not exceeding 2,500,000 yen.

**Article 9** (Consideration in application)

In the application of this Act, due consideration shall be paid to the independent efforts of local governments in properly administrating bidding and contracts.

**Article 10** (Assignment of administrative work)

The Heads of Ministries and Agencies may assign administrative work stipulated in this Act to affiliated agencies of the said Ministries and Agencies (limited to those whose heads are equivalent to Ministers of State under the Act).

Supplementary Provisions (Act No. 101 of July 31, 2002)

This Act shall come into force as from such a day as is fixed by a Cabinet Ordinance within a limit not exceeding six months counting from the date of its promulgation.

Supplementary Provisions (Act No. 110 of December 15, 2006)

This Act shall come into force as from such a day as is fixed by a Cabinet Ordinance within a limit not exceeding three months counting from the date of its promulgation.